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BULLETIN OF THE UNIVERSITY OF WISCONSIN

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ECONOMICS AND POLITICAL SCIENCE SERIES, VOL. 2, NO. 1, PP. 1-182

THE LABOR CONTRACT FROM INDIVIDUAL TO COLLECTIVE BARGAINING

BY

MARGARET ANNA SCHAFFNER

A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
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PREFACE

The present study of the labor contract is tentative in nature. Certain preliminary chapters are here presented as an introduction to a larger study of collective bargaining which the writer intends to complete from the mass of material collected on present conditions in the United States.

The period sketched in the present study lies between the close of the 18th and the beginning of the 20th century. This period marks the transition from individual to organized industry in the United States and it is this transition with which these preliminary chapters are especially concerned.

The facts presented are culled from data secured largely through personal contact with employers and workmen. The work of investigating actual conditions of industry, of interviewing employers and workmen, and of attending the meetings of their various organizations and associations was carried on mainly in Chicago supplemented by work in New York city and in certain smaller centers. The documentary material has been culled from a variety of sources the most fruitful being the records kept in the central administrative offices of some of the stronger unions. The courtesies extended by some of the national and international presidents and secretaries enabled the writer to secure a large amount of evidence from unpublished sources. Certain employers' associations having "labor commissioners" also extended many courtesies in the way of furnishing documentary material bearing on their various methods of bargaining with employees. Yet all the evidence secured through documents is of secondary importance compared to the insight which gradually breaks upon one from daily contact with the persons actively engaged in industry. The writer has come to certain conclusions, which are not generally accepted and which are not borne out by docu-

mentary proof. Nevertheless they seem to be borne out by evidence which rests upon fundamental facts in our industrial life.

The writer desires to express her sincerest thanks to Professor Henry Carter Adams of Michigan University for many helpful suggestions in the early stages of the work, and to Professor John R. Commons of the University of Wisconsin for suggestive criticisms in the final preparation of the manuscript. The many courtesies extended by officials of labor organizations, by employers, and by "labor commissioners" are thoroughly appreciated. It is a cause for regret that their large number precludes individual recognition of invaluable assistance in enabling the writer to enter into the actual experiences of industrial life. Finally, to Professor Richard T. Ely of the University of Wisconsin, the writer desires to express her deepest obligation. His continued interest and assistance made possible the collection of the data upon which the investigation is based, and his kindly encouragement and helpfulness have made possible the presentation of the material in this preliminary form.

MARGARET A. SCHAFFNER.

THE LABOR CONTRACT FROM INDIVIDUAL TO COLLECTIVE BARGAINING

INTRODUCTORY

In the evolution of the labor contract in the United States two historic facts confront us: the individual bargain of a century ago and the collective agreement of the present day. Separated by less than a century's development, there is a transition from individual to associated action, and, although the individual contract necessarily persists, collective bargaining is coming more and more to have a part in our industrial life.

A close investigation into our economic history reveals the unequal chronological development of our industries. This fact is the key to an understanding of our industrial development. It is impossible to gain an historic conception of our industrial relations until we recognize not only the interdependence but also the separate development of our great industries. To lose sight of the changes which take place in each separate industry in its development from small beginnings until it becomes a well adjusted mechanism employing all of the economies incident to that particular business were as fatal to an understanding of the various stages of collective bargaining as to lose sight of the general advance of our industry as a whole. The past century presents a kaleidoscopic view of industries in their weak beginnings along with those grown to world wide importance, and in practically every decade the complex process of industrial growth is illustrated by industries which coexist in their various stages of development.

The varying relations between employer and employee which have from time to time expressed themselves in the labor contract are largely a reflex of conditions prevailing in our various industries. Hence it is that these relations are so different in different industries at the same time. The formal relations expressed in the labor contract reflect, not so much the spirit

of our general industrial development, as they portray the conditions which exist in any particular industry at any given stage.

The mass of conflicting testimony bearing on the development of collective bargaining during the past century defies any classification of events into chronological periods. The possibility of a more truly historical as well as logical treatment reveals itself when the development of collective action is closely associated with the various industries within which that development has taken place. Viewed from this standpoint it becomes clear that collective bargaining in any industry is largely conditioned by the stage of growth reached by that industry. Under normal conditions individual bargaining co-exists with the individual workshop while the association of larger groups of workmen tends toward the growth of collective action.

But not only has the development of the labor contract been largely determined by industrial relations, it has also been conditioned by law and judicial interpretation which have defined the limits within which the employment contract could be drawn.

To take note of the various factors which have interacted in bringing about the change from individual toward collective action in forming the labor contract would be to write a history of our industrial and social life in all of its complex phases. A careful analysis of the labor contract as it has been developed in the United States must take account of at least two well defined lines of activity. It must consider the changes in the methods and processes of industry in so far as they affect the relations of employer and employee and it must note the limitations placed upon an entirely free adjustment of such contractual relations by our law and judicial interpretation.

In a general way, the relations between employer and employee are based upon our industrial equipment and are conditioned by the legal and moral restrictions imposed by society. Not until each side shall have a share in the control of industrial activities and each side is made to recognize reciprocal rights and obligations will the labor contract finally conserve the interests of both employer and employee and secure the largest possible measure of well-being for society.

CHAPTER I

THE LEGAL BASIS

The Right of Contract

The Labor Contract Under Common Law

In the development of Anglo-Saxon liberty we pass from status to contract. The freedom of the serfs gave them a proprietorship in their labor and left them free to dispose of their services under the common law of the realm.

The labor contract emerged before the property contract under Anglo-Saxon law. The Norman lawyers based their decisions on the legal fiction that the king owned the estates of the realm but in fact, as regards use, there was largely common property. The jurists of a later day, desirous of resting their decisions on an easy working hypothesis adopted the legal fiction that the right of contract was an inference from the right of property. A still later development also rested the right of contract upon the right of personal liberty. English jurisprudence, therefore, bases the right of contract, including the labor contract, upon the rights of private property and of personal liberty. But though the theory of English common law bases contract upon rights which it recognizes as fundamental, freedom of contract is subject to limitations and does not extend to contracts which are criminal or immoral, or which are "expressly made illegal by existing laws." In the United States there has been a greater insistence on freedom of contract than in England. In both countries the legally enacted statute supersedes the common law but in the United States special constitutional objections have been urged against legislation infringing the right of contract.

Under our common law, the labor contract is one by which

an employer engages an employee to do something for the benefit of the employer or of a third person for a sufficient consideration expressed or implied.[1]

The relation thus created is a valid contract where both parties have the requisite legal qualifications for entering into such agreement. The labor contract is subject to all the limitations of contracts, and judicial decisions in the United States have determined that no one may contract away his right of contract and that no one may make contracts forbidden by the state by virtue of its police power.[2]

State Regulation of the Labor Contract

Contracting away the right of contract. The right of contract is a necessary part of freedom but unless it is limited and regulated by the state freedom of contract may nullify itself. Ancient times[3] afford illustrations of slavery arising from free contract and at the present day conditions attached to the labor contract frequently render the contractual relation one of virtual slavery. Where the strength of the contracting parties is so unequal that the will of the stronger may be imposed upon the weaker, not only to the detriment of the individual but of the general public, it becomes the duty of the state to enact legislation which will prevent the individual citizen laboring under the goad of economic necessity from contracting away his inherited rights and liberties.

Statutes relating to "contracting out" have been passed by about one-third of our states.[4] The general import of this legislation is to make contracts releasing the employer for liability

[1] For statutes defining the labor contract compare *Mont. Civ. Code*, 1895, sec. 2650, and *N. D. Civ. Code*, 1899, sec. 4094.

[2] See: *Slaughterhouse Cases*, 1872. 16 *Wall.* 36–130, especially p. 87; *Frorer et al. v. The People*, 1892, 141, Ill. 171; *Braceville Coal Co. v. The People*, 1893. 147 *Ill.* 72; *Holden v. Hardy*, 1898, 169 *U. S.* 366.

[3] Pufendorf, Samuel, *On the Laws of Nature and of Nations.* Part VI, sec. 3.

[4] For typical laws see: *Fla. Rev. St.* 1891, c. 4071, sec. 3; *Ga. Civ. Code*, 1895, sec. 2613; *Ind. Ann. St.* 1901, sec. 7083; *Mass. Rev. Laws*, 1902, c. 106, sec. 16; *Mont. Civ. Code.* 1895, sec. 2242; *N. C. Laws*, 1897, c. 56; and *Wy. Rev. St.* 1899, sec. 2522.

For typical constitutional provisions see: *Col. Const.* 1876, art. 15, sec 15; *Miss. Const.* 1890, art. 7, sec. 193; *Mont. Const.* 1889, art. 15 sec. 16; *Va. Const.* 1902, art. 12, sec. 162.

to employees, null and void. Several states have limited legislation on this point to contracts releasing the employer for liability for injuries due to his own negligence or the negligence of other people in his employ.

Thus the Massachusetts[5] statute reads:

"No person or corporation shall by a special contract with persons in his or its employ, exempt himself or itself from any liability which he or it might be under to such persons from injuries suffered by them in their employment and which result from the employer's own negligence or from the negligence of other persons in his or its employ."

Similarly in Montana[6] the law reads:

"Any contract or agreement entered into by any person, company or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, or the agents or employees thereof shall be absolutely null and void."

But though employer's liability in its general terms is being maintained and expressed more and more in specific statutes, yet employers frequently escape just accountability through the doctrine of common employment. For although statutes have modified the doctrine respecting fellow servants in many of our states[7] further legislation along this line is needed, both to secure uniformity and to bring the present law on the subject into harmony with present industrial conditions.

The statutes relating to common employment, to employers' liability, and to contracting out, limit freedom of contract in a negative way but in reality they extend positive liberty. Green

[5] *Massachusetts, Rev. Laws,* 1902. c. 106, sec. 16.

[6] *Montana, Civ. Code,* 1895, sec. 2242.

[7] For typical laws see: *Ala. Civ. Code,* 1897, c. 43, sec. 1749 *Ariz. Civ. Code,* 1901, sec. 2767; *Ark. Dig.* 1894, c. 130; *Cal. Civ. Code,* 1885. sec. 1970; *Col. Laws,* 1901, c. 67; *Fla. Rev. St.* 1891, c. 4071, sec. 3; *Ind. Ann. St.* 1901, sec. 7083; *Iowa Code,* 1897, sec. 2071; *Kan. Gen. St.* 1901, sec. 5858; *Mass. Rev. Laws,* 1902, c. 106; *Minn. Gen. St.* 1894, sec. 2701; *Miss. Const.* 1890, art. 7, sec. 193; *Mo. Rev. St.* 1899, sec. 2873; *Mont. Civ. Code,* 1895, sec. 905; *N. Y. Laws,* 1902, c. 600; *N. C. Laws,* 1897 c. 56; *Ohio, Ann. St.* 3rd. ed. sec. 3365-22; *S. C. Const.* 1895, art. 9, sec. 15; *Tex. Laws,* 1897, c. 6; *Va. Const.* 1902, art 12, sec. 162; *Wis. Rev. St.* 1898, sec. 1816; *Wy. Rev. St.* 1899, sec. 2522.

has well said: "To uphold the sanctity of contracts is doubtless a prime business of government, but it is no less its business to provide against contracts being made, which, from the helplessness of one of the parties to them, instead of being a security for freedom, becomes an instrument of disguised oppression."[8] Real freedom of contract is possible only where the state places restrictions on the sale of labor so that it becomes impossible for any individual to contract away his right of contract.

Contract Limited by the Police Power. The labor contract is further regulated by a mass of legislation enacted by virtue of the police power of the state.[9] The police power has been defined as "that inherent and plenary power which enables the state to prohibit certain acts or regulate certain private relations for the pupose of securing the safety and health of society."[10]

The supreme court of Illinois has defined the police power as "the law of overruling necessity."[11] By virtue of this power our states have enacted all that great body of legislation which makes provision for the regulation of labor performed under special conditions. The legislation regulating conditions in factories and shops, in mines, and on railways, and in other special industries has in view the general welfare. The laws relating to the hours of labor, the payment of wages, the health and moral condition of employees, and other similar provisions restricting the labor contract seem at first sight to deal exclusively with the welfare of the particular individuals employed in the occupations so regulated; but they have for their basis far deeper grounds. They rest on that inherent and plenary power of the state which enables it to provide for the safety

[8] Green, Thomas Hill, *General Works*, III., 382.

[9] *Commonwealth of Massachusetts v. Alger*, 1851, 7 *Cush.* 53; *Commonwealth v. Hamilton Mfg. Co.* 120 *Mass.* 383; *Cole et al. v. Hall*, 1882, 103 *Ill.* 30; *State v. Holden*, 1896, 14 *Utah* 71; *Holden v. Hardy*, 1898, 169 *U. S.* 366.

[10] Compare the following statement: "The police power . . . is a power co-extensive with self-protection and is not inaptly termed the 'law of over-ruling necessity.' It may be said to be that inherent and plenary power in the state which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society." *Lake View v. Rose Hill Cemetery Co.* 1873, 70 *Ill.* 191.

[11] *Cole et al. v. Hall*, 1882, 103 *Ill.* 30.

Compare the statement of Justice Brown in the opinion of the court in *Holden v. Hardy*, 1898, 169 *U. S.* 366, that "This power, legitimately exercised, can neither be limited by contract nor bartered away by legislation."

and security of society in general.[12] So far the laws which regulate the individual labor contract in our several states, relate largely to the labor of women and minors, yet laws like the Utah 8-hour law[13] indicate a radical advance in state interference in the regulation of the employment contract, and the decision of the supreme court of the United States that the law is "not an unconstitutional interference with the right of private contract, nor a denial of due process of law or of equal protection," shows a tendency toward a broader view of freedom of contract and indicates a more liberal interpretation of the police power of the state.[14]

But while the drift of legislation and of judicial interpretation seems to favor a greater recognition of the right of the state to interfere with private contracts the real problem of the

[12] The extent of this power is expressed in the opinion of the court in *Thorpe v. Ruthland and Burlington R. R. Co.* 1854, 27 *Vermont* 140, as follows: "All contracts and all rights . . . are subject to this power; and not only may regulation which affect them be established by the state but all such regulations must be subject to change from time to time as the general well-being of the community may require or the circumstances may change or as experience may demonstrate the necessity."

[13] *Utah, Rev. St.* 1898, sec. 1337. For court decisions bearing on this law see: *Holden v. Hardy*, 1896, 46 *Pac.* 756; *State v. Holden*, 1896, 14 *Utah*, 71; and *Holden v. Hardy*, 1898, 169 *U. S.* 366.

[14] The following quotation from the opinion of the court in *Holden v. Hardy*, 1898, 169 *U. S.* 366, shows a broad interpretation of the police power: "The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

"It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the State of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer."

labor contract is being worked out in a positive way through the development of collective action on the part of labor.

Rights of Association

The Doctrine of Conspiracy in Relation to the Ordinary Strike, the Sympathic Strike, the Boycott

The rights of association and of collective action on the part of laborers have undergone considerable modification during the past century.[15] In England, until 1824, workmen entering

[15] For evidence on this point consult the following cases. Taken in chronological order they present evidence of an extraordinary evolution in the legal right of laborers to combine:

Trial of the Boot and Shoe Makers of Philadelphia on an indictment for a combination and conspiracy to raise their wages. Tried in the Mayor's Court, January Sessions 1806. Taken in shorthand by Thomas Lloyd, Philadelphia, 1806. (*Commonwealth v. Pullis et al.*)

People v. Melvin, 1809, (*Trial of the Journeymen Cordwainers of the City of New York*). Yates Select Cases, 112. Also compare: *People v. Melvin*, 1810, manuscript record, *New York City Hall Recorder for* 1810, 207–16.

Trial of the Journeymen Cordwainers of Pittsburg, had at the Court of Quarter Sessions for the County of Allegheny . . . December, 1815.

State v. Buchanan, 1821, 5 Har. & J. (Md.) 317 (Not a labor case, but gives an interesting summary of the doctrine of conspiracy as applied to labor disputes.)

Commonwealth of Pennsylvania v. Carlisle, 1821, Brightly's *Nisi Prius* (*Pa.*) 36.

The People of New York v. Henry Trequier, James Clawsey, & Lewis Chamberlain, 1823, 1 Wheeler's *Criminal cases*, 142.

Trial of Twenty-four Journeymen Tailors before the Mayor's Court, Philadelphia, September Sessions, 1827. (*Commonwealth v. Moore, et al.*)

People v. Fisher, 1835, 14 *Wend*, (N. Y.) 9.

Trial of the Twenty-one Journeymen Tailors of the City of New York, Court of Oyer and Terminer, 1836. (*The People v. Faulkner et al.*)

Thompsonville Carpet Mfg. Co. v. Wm. Taylor, Edward Gorman, and Thomas Norton, tried before the superior court for Hartford county, January term, 1836.

Commonwealth v. Hunt, 1840, Thatcher's *Criminal Cases*, 609–642. Tried in the Municipal Court of the City of Boston.

Commonwealth v. Hunt, 1842, 45 *Mass.* (4 *Metc.*) 111.

State v. Donaldson, 1867, 32 *N. J. L.* 151.

Master Stevedores v. Walsh, 1867, 2 *Daly*, (*N. Y.*) 1.

Snow v. Wheeler, 1873, 113 *Mass.* 186.

Old Dominion Steamship Co. v. McKenna, 1887, 30 *Fed.* 1887.

State v. Glidden, 1887, 55 *Conn.* 46.

State v. Stewart, 1887. 59 *Vt.* 273.

Crump v. The Commonwealth, 1888, 84 *Va.* 927.

Casey v. Cincinnati Typographical Union, No. 3. 1891, 45 *Fed.* 135.

Perkins v. Rogg, 1892, 28 *Wkly. Law Bul.* (*Ohio*) 32.

Oxley Stave Company v. Coopers International Union, 1896, 72 *Fed.* 695.

into a combination to advance wages or to lessen the hours of work were subject to prosecution for conspiracy. The English common law of conspiracy was never fully adopted in this country: however, the leaders of strikes were frequently convicted of conspiracy in the United States.[16]

Vegelahn v. Guntner, 1896, 167 *Mass.* 92.

Curran v. Gallen, 1897, 152 *N. Y.* 33.

Reform Club of Masons and Plasterers L. A. 706, Knights of Labor of City of N. Y. et al. v. Laborers' Union Protective Society et al., 1899, 60 *N. Y. Supp.* 388.

National Protective Association v. Cummings 1902, 170 *N. Y.* 315.

Marx & Haas Jeans Clothing Co. v. Watson et al. 1902, 67 *S. W.* 391.

[16] The first trial of this kind for which complete records have come down to us, is entitled *"The trial of the boot and shoemakers of Philadelphia on an indictment for a combination and conspiracy to raise their wages."* It was tried in the Mayor's Court in the January Sessions of 1806 and may be found in the old reports under the title of *Commonwealth v. George Pullis et al.*

The court in summing up the case said, "The common law says there may be cases in which what one man may do without offence, many combined may not do with impunity. . . If the purpose to be obtained be an object of individual interest it may fairly be attempted by an individual. Many are prohibited from combining for the attainment of it. What is the case now before us? A combination of workmen to raise their wages may be considered in a *twofold point of view; one is to benefit themselves, the other, is to injure those who do not join their society. The rule of the law condemns both.* If the rule be clear we are bound to conform to it *even though we do not comprehend the principle upon which it is founded.* We are not to reject it because we do not see the reason for it. . . . But the rule in this case is pregnant with sound sense and all the authorities are clear upon the subject. Hawkins, the greatest authority on the criminal law, has laid it down, that a *combination* to maintaining one another carrying on a particular object, whether *true or false* is criminal. The authority for the case of the *King v. the Journeymen Taylors of Cambridge* (1721) does not rest merely upon the reputation of Vol. 8. *Modern Reports.* There are other authorities. It is adopted by Blackstone, and laid down as the law by Lord Mansfield in 1793, that an act innocent in an individual, is rendered criminal by a confederacy to effect it. . . . In the profound system of law . . . there is often great reason for an intsitution though a superficial observer may not be able to discover it. Obedience alone is required in the present case. . . . It lays with you gentlemen of the jury to decide. . . . If you can *reconcile* it to your *consciences,* to find the defendants *not guilty,* you will do so; if not, the alternative that remains is a verdict of guilty."

The report of the jury was,—*"We find the defendants guilty of a combination to raise their wages".* The court thereupon fined them $8 each with costs of suit to stand committed till paid. The social philosophy which decided this case is explicitly summarized in the statement of the court that "A combination of workmen to raise their wages may be either to benefit themselves, or to injure those who do not join their society" and that *"the rule of the law condemns both."*

The trial of the *Journeymen Cordwainers of New York City* in 1810 is another case in which the journeymen were indicted for conspiracy. Stripped of legal phraseology the indictment in general pertained to,—their unlawfully uniting themselves into clubs,—refusing to work with non-union men,—agreeing not to work at a lower rate.—and conspiring to impoverish their masters.

In his charge the court quoted from the case of the *Journeymen Taylors of*

It has been maintained that "the ordinary strike of itself has never been illegal in this country and was probably only illegal in England on account of the peculiar interference of the government in labor questions."[17]

But whatever the theory of our law may have been, the fact remains that special legislation by our states has been necessary to change the doctrine under which our courts held combinations on the part of labor to be unlawful conspiracies. The Pennsylvania law provides that:—"It shall be lawful for employees, acting either as individuals or collectively, or as the members

Cambridge, 1721, that—"Journeymen confederating and refusing to work unless for certain wages may be indicted for a conspiracy, for this offense consists in the *conspiring* and not in the refusal to work and conspiracies are illegal although the subject matter of them be lawful." (8 *Mod.* 11) However, he observed that he did not mean to say, nor did the facts in the case require them to decide whether an agreement not to work except for certain wages would amount to this offense without any unlawful means taken to enforce it. The jury returned a verdict against the defendants. The court in passing sentence said the novelty of the case and the general conduct of their body composed of members useful in the community inclined him to believe that they had erred from their ignorance of the law. That the present object of the court was rather to admonish than to punish but an adjudication upon the subject being now solemnly had it was recommended to them so to alter and modify their rules and conduct as not to incur in future the penalties of the law. They were then fined one dollar each with costs. The *People of New York v. Melvin et al*, 1810, 2 Wheeler's *Crim. Cases*, (*N. Y.*) 262.

In the case of the *State of Maryland v. Buchanan* (in 1821) a case which had no special bearing on labor disputes the court (Chase, Ch. J.) in defining various forms of conspiracy declared that "A combination among labourers or mechanics to raise their wages is a conspiracy at common law and indictable although lawful for each separately to raise his wages." Perhaps this illustrates as well as anything could, how thoroughly this doctrine of conspiracy in labor disputes had taken possession of the public mind and of judicial opinion. And yet it is interesting to note that in the case of the *Commonwealth of Pa. v. Carlisle*, tried in the same year, when the tables were turned and an indictment was brought against master shoemakers for agreeing with each other not to employ any journeymen who would not consent to work at reduced wages, that the court declared,—"It would be an assumption of the question to say it is criminal to do a lawful act by unlawful means when the object must determine the character of the means." *Commonwealth v. Carlisle*, 1821, Brightly's *Nisi Prius*, (*Pa.*) 36.

For further conspiracy trials, compare: *The People v. Henry Trequier James Clawsey, & Lewis Chamberlain*, 1823, 1 Wheeler's *Criminal Cases*, (N. Y.) 142. *Commonwealth v. Moore et al.* Mayor's Court, Philadelphia, September Sessions, 1827; *People v. Fisher*, 1835, 14 *Wend*, (*N. Y.*) 9; *State v. Donaldson*, 1867, 32 *N. J. L.* 151.

Also see the list of cases cited in the Albany Law Journal, Aug. 12, 1871, with the following editorial comment: "one would not have to look very far for authorities to prove that all 'strikes' gotten up by these unions for the purpose of increasing wages are criminal offenses and subject the 'strikers' to indictment."

[17] Stimson, F. J., *Labor in its Relation to Law*, 95.

of any . . . organization, to refuse to work . . . for any persons . . . or corporations, whenever in . . . their opinion the wages paid are insufficient, or, . . . their treatment is offensive or unjust, or whenever the continued labor . . . by them would be contrary to the . . . regulations . . . of any . . . organization . . . of which they may be members . . . and it shall be lawful for . . . them to devise and adopt ways and means to make such . . . regulations . . . effective without subjecting them to indictment for conspiracy at common law or under the criminal laws of the Commonwealth."[18] Similar legislation has been passed in several other states.

Maryland has repealed the entire common law of conspiracy, in the following statute:—"An agreement or combination by two or more persons, to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy, if such act, committed by one person, would not be punishable as an offense."[19] This statute may be taken as a legal expression of the doctrine upon which our courts are acting at the present time.[20] It has taken nearly a century for labor

[18] *Pennsylvania Digest*, 1895, 484, 2017, 2019.

[19] *Maryland Pub. Gen. Laws*, 1888, art. 27, sec. 31.

[20] Compare the following cases: *Perkins v. Rogg*, 1892, 28 *Wkly. Law Bul. (Ohio)* 32; *Reform Club of Masons and Plasterers, L. A. 706, Knights of Labor of City of N. Y. et al. v. Laborers' Union Protective Society et al.*, 1899, 60 *N. Y. Supp.* 388; *National Protective Association v. Cummings*, 1902, 170 *N. Y.* 315.

Also see the following statement from the dissenting opinion of Judge Holmes in *Vegelahn v. Guntner*, 1896, 167 *Mass.* 92. "It is plain from the slighest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination.

"It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental axioms of society and even the fundamental conditions of life are to be changed. One of the eternal conflicts out of which life is made up is that between the efforts of every man to get the most that he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way.

"If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view of getting the greatest possible return, it must be true that when com-

to secure a general recognition of its rights to combine, and the final acceptance of this doctrine indicates that we have attained to a larger conception of what constitutes real liberty.

But though the ordinary strike has attained a legal status, the sympathetic strike has not. The law in taking cognizance of the intent of the action holds that sympathetic strikers have in view, not so much the improvement of their own conditions as the injury of the party against whom they conduct such strike, and, therefore, the action is held illegal. However, recent decisions of our courts seem to indicate that both the sympathetic strike and the boycott are beginning to acquire a legal status.[21]

bined they have the same liberty that combined capital has, to support their interests by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control. I can remember when many people thought that, apart from violence or breach of contract, strikes were wicked, as organized refusals to work. I suppose that intelligent economists and legislators have given up that notion to-day. I feel pretty confident that they equally will abandon the idea that an organized refusal by workmen of social intercourse with a man who shall enter their antagonist's employ is unlawful, if it is dissociated from any threat of violence and is made for the sole object of prevailing, if possible, in a contest with their employer about the rate of wages."

[21] The tendency to admit the legality of the boycott is more evident in cases dealing with employers' associations, but several recent decisions have given clear expression to the legal right of labor organizations to employ the boycott. With reference to employers' associations see the decision of the supreme court of Minnesota in *Bohn Mfg. Co. v. Hollis et al.*, 1893, 54 *Minn.* 223, in which it was held that any man (unless under contract obligation or unless his employment charges him with some public duty) has a right to refuse to work for or deal with any man or class of men, as he sees fit; and this right which one man may exercise singly, any number may agree to exercise jointly.

Also compare the decisions of the Pennsylvania Supreme Court in 1894 to the effect that it was *not* unlawful coercion for a combination of employers to prevent dealers in supplies from selling to an employer who was not a member of their combination —and who had conceded a demand of the employers—by informing such dealers that no member of the combination would buy from them if they sold to such employer. See *Cote v. Murphy et al.* 159 *Pa. St.* 420; *Buchanan v. Barnes*, 28 *at.* 195; *Buchanan v. Kerr*, 159 *Pa. St.* 433.

With reference to boycotts by employees compare the recent decision of the supreme court of Missouri in which the legality of the boycott was upheld on the ground of the constitutional right of free speech. The court declared, "No halfway house stands on the highway between absolute prevention and absolute freedom. The rights established by section 14 can neither be impaired by the legislature, nor hampered nor denied by the courts. Nor does it in any way change the complexion of this case by reason of its being alleged in the petition 'that the defendents, and each of them, is [are] without means, and has [have] no property, over and above the exemption allowed by law, wherefrom the plaintiff might secure satisfaction for the damages resulting to it from the acts aforesaid.' The constitution is no respecter of persons. The impecunious man 'who hath not where to lay his head' has as good right to free speech, etc., as has the wealthiest man in the community. And in this connection it is to be constantly borne in mind that the principle is firmly rooted in equity juris-

The question arises,—How have we finally come to the acceptance of the doctrine that workmen have the right to combine? Is there no common basis for the apparently irreconcilable decisions?

Throughout all the maze of divergent legislation and of conflicting judicial decisions in our several states there runs a

prudence that, though there be no remedy at law, this does not necessarily and of itself give a court of equity jurisdiction to afford relief. The authority to enjoin finds no better harbor in the empty pocket of the poor man than in the full pocket of the rich man. And such authority to enjoin can have no existence in circumstances such as the present case presents, if the Constitution is to be obeyed. If these defendants are not permitted to tell the story of their wrongs, or, if you please, their supposed wrongs, by word of mouth, or with pen or print, and to endeavor to persuade others to aid them by all peaceable means in securing redress of such wrongs, what becomes of free speech, and what of personal liberty? The fact that in exercising that freedom they thereby do plaintiff an actionable injury does not go a hair toward a diminution of their right of free speech, etc., for the exercise of which, if resulting in such injury, the Constitution makes them expressly responsible. But such responsibilitiy is utterly incompatible with authority in a court of equity to prevent such responsibility from occurring." *Marx & Haas Jeans Clothing Co. v. Watson et al.* (United Garment Workers of America) 1902, 168 *Mo.* 133.

A decision recently (1901) made by Judge Tuley of Chicago in the circuit court of Cook County in the case of boycott by the Mosaic Workers Union of that city presents a striking contrast to some of the earlier cases. It seems that a certain contractor charged the members of the Mosaic Workers Union, and entered suit against them for conspiring to injure his business. The facts alleged by the plaintiff were admitted, but the construction put upon them in the complaint was denied by the defendants. They admitted sending circulars to architects, builders and contractors setting forth that the plaintiff was the only mosaic manufacturer in Chicago who had refused to sign the agreement with the union and that in consequence no union man would work for him. The circular further said "we therefore request you not to let any contract to him until he has acceded to our demands. Sympathetic strikes will result on any building where he gets a contract."

The question at issue was,—"Was there in these statements a wrongful attempt to injure the non-union contractor?" After summing up the evidence, Judge Tuley instructed the jury to bring in a verdict of *not guilty*. He declared the law bearing upon the facts to be as follows:—"The law holds that any person in competition with another may state the truth regarding the business of the other however injurious to the business of the other that truth may be. This is true of combinations and corporations as well as of individuals. The motive of making such truthful though injurious statements may be to take from the other some of his business and to add to the business of the person making those statements. The motive is a legal one. The act and the motive in this case are both legal. In other words competition is industrial welfare and injury is not the test of wrong. A man has the right to attract all the patronage he can, not only by praising his own goods, but by telling unfavorable things (provided they are true) about the goods of his rivals. He may injure them, but his method is not wrongful. The Mosaic Workers' Union simply told the truth about its relation to Davis and the consequences that would follow the letting of contracts to him. An injury may have resulted but such an injury as the union had a legal right to inflict."

unifying principle which shows the common basis for apparently irreconcilable conclusions: and this principle hinges upon the question whether the parties involved in the dispute had an eye single to the improvement of their own condition or whether they had in view the injury of the person against whom their action was directed.[22] A variety of decisions is inevitable where the law seeks, as it does here, to discover the intent and purpose of the action. Where the decision goes beyond the mere question as to the legality or illegality of the act a host of qualifying circumstances arise to modify the decision in each particular case. Moreover, the personal equation enters into the question and qualifies the decision according to the social philosophy of the court.

The history of the labor contract illustrates the changes wrought in our legal theory and our social philosophy. Under the Elizabethan statutes the individual laborer was restrained from contracting for wages higher than the amount limited by law. Under these statutes "A combination to enforce a higher rate was necessarily a combination with an illegal purpose."[23]

The reaction against excessive regulations which had outlived the form of industry thus regulated, cleared the way for the idea that the individual contract, free from all limitations by the state would emancipate labor. This was merely one phase of the individualistic philosophy of the 18th century and as a social theory it adapted itself readily to the industrial conditions which preceded the Industrial Revolution. The trend of events in industry soon compelled the state to impose limita-

[22]One of the most interesting points in the *Trial of the Boot and Shoe Makers of Philadelphia*, 1806, is that when the prosecution finally left their case with the court they rested it upon the claim that such combinations were conspiracies which in themselves were unlawful even if unaccompanyed by force, threats, or intimidation. To substantiate this claim various authorities were quoted (p. 136) and finally the claim was rested upon the common law. The court expressed the same thought in the following concise words: "A combination of workmen to raise their wages may be considered in a *twofold point of view; one is to benefit themselves, the other, is to injure those who do not join their society. The rule of the law condemns both.*" In subsequent cases we find more effort made to prove that it was not the combination to better their own condition that was unlawful but the injury accruing to others on account of their actions that subjected workmen to indictment for conspiracy; *and this distinction remains the point at issue in labor disputes to the present day.*

[23]Stimson, F. J, *Labor in its Relation to Law*, 79

tions on the right of free contract and led to the recognition of the right of laborers to combine.

In this country the position was gradually reached that laborers had the legal right to strike for the purpose of improving their own condition. But after the ordinary strike had become legal, the sympathic strike remained illegal because the law refused to recognize a solidarity of interest sufficiently great to justify a strike against an employer, against whom the strikers had no common grievance. Gradually, the recognition of a broader range of common interests is leading our courts to hold the sympathetic strike and even the boycott legal.

The varying attitude of the law toward the individual demand, the strike, and the boycott, illustrates the change which has come about in our jurisprudence. We pass from the stage where the law recognized the right of the individual laborer to demand better conditions, to the stage where it recognizes the legality of collective action on the part of small groups of laborers closely bound together in their common interests. Finally, we are reaching the point where the law is beginning to recognize the right of collective action on the part of still larger groups of laborers having fewer interests in common and acting together only occasionally for the accomplishment of some definite purpose. Almost unconsciously our jurisprudence has developed until it furnishes a legal basis for collective bargaining.

Enforcement of Collective Agreements

Responsibility of the Organization

The development of greater personal rights on the part of the individual laborer and the assumption of corporate rights and obligations on the part of labor organizations will place labor in a position to make effective use of its legal right of collective action. But there are no rights without corresponding duties. With the acquisition of new rights, labor must assume reciprocal obligations. The legal machinery necessary for collective bargaining will avail nothing unless labor organizations develop a responsibility which will enable them to fulfill

their contracts. It has long been a principle of English jurisprudence that courts will not enforce the individual labor contract. It would compromise the spirit of Anglo-Saxon liberty to allow our courts to enforce a contract for personal service. But our law provides for recovery of damages for breach of the labor contract the same as for other contracts. The only difference lies in the remedy, as it is impossible to collect damages from a propertyless man.

Now if organized labor takes general advantage of its legal right to make collective agreements, the inevitable result will be to strengthen its industrial position so that it will be able to demand better conditions of labor and a larger share of the output of industry. But with the acquisition of larger control in industry will arise the responsibility—inseparable from the right of contract—of fulfilling its part of the agreement, or else subjecting itself to action for damages for breach of contract.[24] If the group bargains as to the terms of the agreement, the group must eventually assume responsibility for the fulfillment of those terms. In the actual process of collective bargaining in the United States this responsibility is being assumed by labor organizations.[25] Certain unions have even gone to the

[24]For cases of violation of collective agreements on the part of employers, see: *United Brotherhood of Cloak Makers v. Gurewitz, N. Y. Law Journal,* Aug. 1, 1900; *United Brotherhood of Cloak Makers v. Frank, N. Y. Law Journal,* Nov. 8, 1900.

[25]The following methods of arbitration illustrate some of the practical devices employed in securing the enforcement of collective agreements.

Arbitration Agreement between American Newspaper Publishers' Association and International Typographical Union.

SECTION 1. On and after May 1, 1902, and until May 1, 1907, any publisher who is a member of the American Newspaper Publishers' Association, employing union labor in any department or departments of his office under a contract or contracts, written or verbal, with a local union or unions affiliated with the International Typographical Union where such contracts have been approved by the president of the latter organization, as well as under all contracts in force on May 1, 1901, shall have the following guarantees:

a. He shall be protected under such contract or contracts by the International Typographical Union against walk-outs, strikes boycotts, or any other form of concerted interference with the peaceful operation of the department or departments of labor so contracted for, by any union or unions with which he has contractual relations; provided such publisher shall enter into an agreement with the International Typographical Union to arbitrate all differences that may arise under said verbal or written contracts between said publisher and the local union affecting union employees in said department or departments, if such said differences can not be settled by conciliation.

b. All disputes arising over scale provisions relating to wages and hours in

extent of supplying union men to take the places of other union men on strike, when in the judgment of the general organization the men striking had insufficient cause for such action.

renewing or extending contracts shall likewise be subject to arbitration under the provisions of this agreement, if such disputes can not be adjusted through conciliation.

It is expressly understood that contracts hereafter entered into by publishers with allied trades councils shall not be recognized as coming under the terms of this agreement.

SEC. 2. The International Typographical Union further agrees to arbitrate any and all differences that may arise in the mechanical departments of any newspaper, member of the American Newspaper Publishers' Association, which shall enter into an agreement to that effect; provided all departments of said newspaper under the jurisdiction of the International Typographical Union are strictly union departments and are so recognized.

SEC. 3. The question whether a department shall be union or non-union shall not be classed as a "difference" to be arbitrated.

SEC. 4. If conciliation between the publisher and a local union fails, then provision must be made for local arbitration. If local arbitration or arbitrators can not be agreed upon, all differences shall be referred, upon application of either party, to the National Board of Arbitration. In case a local board of arbitration is formed, and a decision rendered which is unsatisfactory to either side, then review by the National Board of Arbitration may be asked for by the dissatisfied party, provided notice to the other party to that effect is given within fifteen days thereafter. It shall be optional with the board to grant or deny such review as the facts in the case may warrant.

SEC. 5. In case a review is granted, as provided in section 4, the National Board of Arbitration shall not take evidence except by a majority vote of the board, but both parties to the controversy may be required to submit records and briefs, and to make oral or written arguments (at the option of the board) in support of their several contentions. They may submit an agreed statement of facts, or a transcript of testimony properly certified to, before a notary public by the stenographer taking the original evidence or depositions.

SEC. 6. Pending final decision, work shall be continued in the office of the publisher, party to the case, and the award of the National Board of Arbitration shall, in all cases, include a determination of the issues involved, covering the period between the raising of the issues and their final settlement; and any change or changes in the wage scale of employees may, at the discretion of the board, be made effective from the date the issues were first made.

SEC. 7. Union departments shall be understood to mean such as are made up wholly of union employees, in which union rules prevail, and in which the union has been formally recognized by the employer.

SEC. 8. This agreement shall apply to individual members of the American Newspaper Publishers' Association or local associations of publishers accepting it and the rules drafted hereunder, at least sixty (60) days before a dispute shall arise.

SEC. 9. The National Board of Arbitration shall consist of the president of the International Typographical Union and the commissioner of the American Newspaper Publishers' Association, or their proxies, and in the event of a failure to reach an agreement, these two shall select a third member in each dispute, the member so selected to act as chairman of the board. The finding of the majority of the board shall be final, and shall be accepted as such by the parties to the dispute under consideration.

SEC. 10. In the event of either party to the dispute refusing to accept and comply with the decision of the National Board of Arbitration, all aid and

However, it is folly to expect labor organizations to assume corporate responsibility until our law and judicial interpretation have attained to a clearer and more consistent expression of reciprocal rights and obligations under our present system

support to the firm or employer, or local union refusing acceptance and compliance, shall be withdrawn by both parties to this agreement. The acts of such recalcitrant employer or union shall be publicly disavowed, and the aggrieved party to this agreement shall be furnished by the other with an official document to that end.

SEC. 11. The said National Board of Arbitration must act, when its services are desired by either party to a dispute as above, and shall proceed with all possible dispatch in rendering such services.

SEC. 12. All expenses attendant upon the settlement of any dispute, except the personal expenses of the commissioner of the American Newspaper Publishers' Association and the president of the International Typographical Union, shall be borne equally by the parties to the dispute.

SEC. 13. The conditions obtaining before the initiation of the dispute shall remain in effect pending the finding of the local or of the National Board of Arbitration.

* * *

Arbitration Agreement between American Newspaper Publishers' Association and International Printing Pressmen's and Assistants' Union.

SECTION 1. On and after May 1, 1902, and until May 1, 1907, any publisher who is a member of the American Newspaper Publishers' Association employing union labor in the pressroom of his office, under an existing contract, either written or verbal, with a local pressmen's union chartered by the International Printing Pressmen's and Assistants' Union, shall be protected under such contract by the International Printing Pressmen's and Assistants' Union against walk-outs, strikes, boycotts, or any other form of concerted interferences with the peaceful operation of labor in his press rooms so contracted for by said local pressmen's union. Likewise in case of the termination of said contracts, labor in said pressrooms shall be continued by said union, and if differences arise in the framing of a new contract as to wages, hours, etc., they shall be settled first by conciliation, if possible, and if not, then by arbitration, as provided in this agreement.

Provided, The said publisher shall enter into an agreement with the International Printing Pressmen's and Assistants' Union to arbitrate all differences that may arise between the said publisher and the members of the Pressmen's Union in his employment, in case said differences can not first be settled by conciliation and mutual agreement.

SEC. 2. If conciliation between the publisher and the local union fails, then provision must be made for local arbitration. If local arbitration or arbitrators can not be agreed upon, all differences shall be referred, upon application of either party, to the International Board of Arbitration. In case a local board of arbitration is formed, and a decision rendered which is unsatisfactory to either side, then an appeal may be taken to the International Board of Arbitration by the dissatisfied party.

SEC. 3. In cases of appeal from a local board of arbitration, the International Board of Arbitration shall not take evidence, except by a majority vote of the board; but the appellant and the appellee may be required to submit records and briefs, and to make oral or written arguments (at the option of the board) in support of their respective contentions. The parties to the controversy may submit an agreed statement of facts, or a transcript of testimony

of industry. Trade unions have much to lose and little to gain from incorporation until the old bug-bear doctrine of conspiracy has once and for all been erased from our statutes and our

properly certified to, before a notary public, by the stenographer taking the original evidence or depositions.

SEC. 4. Pending decision under such appeal, work shall be continued in the press room of the publisher, party to the case, and the award of the International Board of Arbitration shall, in all cases, include a determination of the issues involved, covering the period between the raising of the issues and the final settlement; and any change or changes in the wage scale of employees, may, at the discretion of the board, be made effective from the date the issues were first made.

SEC. 5. If in any case any number of newspaper publishers of any city forming a local publishers' association enter into contract verbal or written with the Pressmens' Union of said city under the jurisdiction of the International Printing Pressmen's and Assistants' Union, then, and in that case, such association shall enjoy all the rights and be subjected to all the obligations hereby applying to any individual publisher as noted above.

SEC. 6. Employers whose press rooms are operated by members of the Pressmen's Union under the jurisdiction of the International Printing Pressmen's and Assistants' Union, and in which press rooms disputes or differences arise which can not be settled locally, shall have the right to demand the services of the International Board of Arbitration.

SEC. 7. In like manner local unions of the International Printing Pressmen's and Assistants' Union, becoming involved in disputes with a publisher concerning the operating of the press rooms heretofore described, and which can not be settled locally, shall have the right to demand the services of the International Board of Arbitration.

SEC. 8. The words "union press rooms" as herein employed shall be construed to refer only to such press rooms as are operated wholly by union employees, in which union rules prevail, and in which the union has been formally recognized by the employer.

SEC. 9. It is understood that this agreement shall apply to individual members of the American Newspaper Publishers' Association, or publishers connected with its labor bureau, or local associations of publishers accepting it and the rules drafted hereunder, at least thirty days before a dispute shall arise.

SEC. 10. The International Board of Arbitration shall consist of the president of the International Printing Pressmen's and Assistants' Union and the commissioner of the American Newspaper Publishers' Association, or their proxies, and in the event of failure to reach an agreement, these two shall select a third member in each dispute, the member so selected to act as chairman of the board. The finding of a majority of the board shall be final, and shall be accepted as such by the parties to the dispute under consideration.

SEC. 11. In the event of either party to the dispute refusing to accept and comply with the decision of the International Board of Arbitration, all aid and support to the firm or employer or local union refusing acceptance and compliance, shall be withdrawn by both parties to this agreement. The acts of such recalcitrant employer or union shall be publicly disavowed, and the aggrieved party to this agreement shall be furnished by the other with an official document to that effect.

SEC. 12 The said International Board of Arbitration must act, when its services are desired by either party to a dispute as above, and shall proceed with all possible dispatch in rendering such service.

SEC. 13. All expense attendant upon the settlement of any dispute, except

judiciary have learned the difference between liability for the fulfillment of contractual obligations and liability for injury, incidental to the right of each party peacefully to pursue its

the personal expenses of the president of the International Printing Pressmen's and Assistants' Union and of the commissioner of the American Newspaper Publishers' Association, shall be borne equally by the parties to the dispute.

SEC. 14. The conditions obtaining before the initiation of the dispute shall remain in effect pending the finding of the local or International Board of Arbitration.

* * *

Agreement made by the Operators of Iowa and the United Mine Workers of District Thirteen effective April 1st, 1902, until April 1st, 1903.

At a joint conference of the United Mine Workers of America and the Iowa Coal Operator's Association held at Des Moines, Iowa, March 17, 1902, the following scale, rules, regulation and agreement were entered into and adopted for District Thirteen for the year beginning April 1st, 1902, and ending March 31st, 1903.

Resolution No. 8. The duties of the pit committee shall be confined to the adjustment of disputes between the pit boss and the miners or laborers arising out of this agreement, or any local agreement made in connection herewith, where the pit boss and said miners or mine laborers have failed to agree. In case of any local trouble arising at any mine through such failure to agree between the pit boss and any miner or mine laborer, the pit committee and the pit boss are empowered to adjust, and in case of their disagreement it shall be referred to the superintendent of the company and the miner's President of the Local Union, or local Executive Board of not more than five members, the meeting of said board not to be held while the mine is in operation and should they fail to adjust it, it shall be referred to the operator of the mine and the miner's State President, and should they fail to agree they may submit the matter to arbitration which shall be final or the matter shall be referred in writing to the Executive Committee of the Iowa Coal Operators' Association and the State Executive Board of the U. M. W. of A. for adjustment, and in all cases the miners or mine laborers and parties involved must continue at work pending an investigation and adjustment until a final decision is reached in the manner above set forth.

If any employes doing day work shall cease work because of a grievance which has not been taken up for adjustment in the manner provided herein and such action shall seem likely to impede the operation of the mine, the pit committee shall assist the company in obtaining a man or men to take such vacant place or places at the scale rate in order that the mine may continue at work. In case the mine is shut down in violation of these agreements, or any of them, the organization will at all times furnish all the men required by the operator at the scale rate to properly care for the mine.

Resolution No. 19. Any Local Union causing any mine to shut down in violation of this agreement, where the state law is not being violated, the members thereof shall be assessed twenty-five cents each, the same to be collected by the company on its pay roll and paid over to the Secretary-Treasurer of District No. 13. Any officer or any member of any committee of any local union, unless acting under instructions of his Local Union, who shall advise or encourage any employe to refuse or cease to work, where he has a right to work under this agreement, may be discharged; provided that if such officer or member of committee is acting under instructions of the Local Union, then the

own interests while involved in a labor dispute. Labor organizations must eventually assume responsibility for the fulfillment of their collective agreements or collective bargaining will become impossible: but they ought hardly to be blamed for refusing to incorporate as long as incorporation is likely to subject them to damages which could not be imposed if our courts consistently refused to recognize the worn-out doctrine of conspiracy.

Unfortunately the legal expression of rights is usually a century behind industrial conditions. However, recent decisions presage a rapid evolution of the law defining and regulating the obligations of labor contracting in its collective capacity. The further development of our law will undoubtedly make labor organizations responsible for the fulfillment of their agreements but will remove all causes of action for damages against unions, excepting such as are either expressed or directly implied in the contract under which damages are claimed. To make labor unions responsible for incidental injuries to other parties while they are peacefully seeking to improve their own condition through a strike or boycott is to place them on a different footing from individuals or other ogranizations.

"A corporation may while pursuing its own interests injure another but it is not, therefore, held responsible, and our courts ought not to hold unions responsible."[26]

Our law has finally attained to quite a consistent expression of the right of labor to combine. Its next step must be a guarantee that the right shall be effective by removing all liability for damages which are based upon the old common-law doctrine of conspiracy. With the danger of this extraordinary liability removed, labor organizations will begin to look with more favor

assessment as above shall be made. This not to apply to officers or committeemen who advise a man to leave the employ of the company.

It is agreed whenever any mine foreman or other representative of the company persists in violating the agreement, or in using abusive language to employes, without sufficient provocation, the local union shall have the right to prefer charges against said foreman or representative of the company to the Joint State Board of Miners and Operators, and if the charges are sustained, the operator agrees to remove such foreman or other representative of the company, or the Joint Board may mete out such other merited punishment as the exigencies of the case may demand.

[26] Ely, Richard T. Class room lectures on the *Distribution of Wealth*, Madison, 1898, Book 1, part 2, chap. 5, par. IX.

upon incorporation. With labor organized into responsible corporate bodies collective bargaining will be put on a firmer basis. As the representatives of mutually responsible bodies, joint arbitration and conciliation boards within the trade will be better able to adjust conflicting interests through voluntary action. Collective bargaining may thus become a strong force making for industrial peace.

Rights of the Individual Member

The question of the rights of the individual member within the organization brings us to the final test as to the possibility of developing collective bargaining along lines which shall be consistent with personal liberty. How can unions enforce their own rules without exercising a tyranny which might become inimical to personal rights? A sufficient guarantee against such a contingency seems to be the democratic government of labor organizations. Most of our older unions employ the referendum in deciding questions of policy, and provide elaborate systems of appeal for cases of individual grievances. It seems hardly probable that members would establish regulations subversive of their own personal rights in a society in which each has an equal vote.

A more probable outcome might be such a development of corporate responsibility on the part of unions toward individual members, that individual members could legally restrain officers from using beneficiary funds for strike purposes. Such a result would greatly impair the fighting strength of unions and it is probable that we shall follow the English law[27] on this point, which enables leaders to exhaust the accumulated funds of the union in times of labor war because contracts between unions and their members cannot be enforced in the courts. Yet, even this delegation of power to leaders, great as it seems, is in reality, but an expression of the collective authority of the organization and must be exercised with the greatest discretion or it becomes self-destructive. Moreover, as organizations grow in strength and stability the necessity of employing beneficiary funds for the purpose of self-preservation gradually disappears.

[27] *Trade Union Act*, 1871, 34 and 35 *Vict.* c. 31.

If the rights within the organization did not guarantee to the individual members greater privileges and strength than is possible for them to attain individually, there would not be sufficient motive for combination. The conservative, prudent action of our older trade unions seems to justify the view that the further development of labor organizations will so extend the personal rights of labor in industry, that those rights will serve their members in lieu of property rights.[28]

This idea of a development of personal rights, which shall serve as a substitute for property rights, gives us a broadened concept of personal liberty.

The development of the labor contract from the individual bargain to the collective agreement thus brings us from the stage of individual political liberty to a condition in which the individual laborer finds a higher personal liberty through associated action.

Under a system of domestic industry, political liberty seemed adequate to secure the rights of the individual in society. Anglo-Saxon constitutions and Anglo-Saxon legislation embody this principle and emphasize over and over again the importance of individual liberty. But what is liberty for one century may become tyranny for the next unless there is a constant readjustment to new conditions. The acquirement of political liberty was only one step in the evolution of the highest form of personal liberty and the complex organization of present industrial society is demanding industrial liberty as the necessary complement of political liberty.

But how is this liberty to be acquired? It cannot be bestowed as a gift by the state. The state may extend liberty through wise regulation; but real liberty is not a gift. It is a right to be won and defended by those who would enjoy it. The past century presents a struggle for the acquisition of new rights on the part of labor in order that it might gain a position where its rights should become co-ordinate with the new duties and obligations which it necessarily assumed under a complex organization of industry. Labor has insisted upon rights of asso-

[28] Adams, Henry C. *Address before the Congress on Industrial Conciliation and Arbitration*. . . . Chicago, 1894, 63-68.

ciation and the right of collective action until the force of its insistence has enacted new legislation and the weight of its argument has affected judicial decisions.

It is the alert, aggressive action of labor demanding a larger voice in the control of industry and insisting upon a broader interpretation of personal rights which must finally transform our idea of political liberty into the more comprehensive concept of industrial liberty.

But the fullest realization of industrial liberty can be arrived at only by conserving all of the rights and duties which have been acquired in the long struggle for political freedom. It is not a turning away from, but a further development of our Anglo-Saxon liberty which will bring about a more democratic industrial society. Restrictions and limitations by the state play a necessary part in the adjustment of reciprocal rights in forming the labor contract, yet they serve rather as a restraining than as a positive force. The further develpoment of personal rights including the rights of association and of collective action will tend to equalize the strength of the two parties to the labor contract and will dispose of the necessity of state interference except in so far as the private agreement affects the welfare of the general public.

The trend of events in our industrial life has modified our old conception of freedom of contract and our concept of individual liberty is being widened to embrace the individual in his social relations. The further evolution of our jurisprudence will conform to this change in our social philosophy and will define the personal rights of the individual from the broad standpoint of social obligation. Finally, the ethical sense of our people will sanction this development because it will be found in line with social well-being.[29]

[29] von Ihering describes the evolution of the law in the following concise statement: "The end of the law is peace. The means to that end is war. All the law in the world has been obtained by strife. Every principle which obtains had first to be wrung from those who denied it; and every legal right,—the legal rights of a nation as well as those of individuals,—supposes a continual readiness to assert it and defend it. The law is not mere theory, but living force. . . . For the idea of the law is an eternal Becoming; but that which Has Become, must yield to the new Becoming." *"The Struggle for Law."* Translated from 5th German edition by John G. Lalor.

CHAPTER II

THE INDUSTRIAL BASIS

The Growth of Industries and the Organization of Labor

We have noted how the attitude of the law has changed toward labor during the past century. The question remains,—how did this change come about? What were the forces at work? How did reciprocal rights and duties between employer and employee adjust themselves under an ever changing and expanding industry? How were industrial rights on the part of labor gradually extended and how was general recognition of such rights and privileges finally won?

In the evolution of organized industrial life in the U. S. we pass from the individual workshop to large scale production and from the individual employer to the representative of consolidated industries employing thousands of men. Parallel with the growth of industries there has gone the development of collective action on the part of labor and a close analysis of our industrial history reveals more than an accidental connection between these two phenomona.

When we trace the development from individual to organized industry we are confronted at every stage with the union of employees seeking through organization to place themselves in a more advantageous position for bargaining with their employers. The relations established between employer and employee from time to time are the result of the struggle of conflicting interests. The rights secured and the obligations assumed by the two parties to the labor contract measure the relative strength of the interests involved. The conditions established are as varying as are the forms of industrial organization and one of the most significant features in our economic history is the close adjustment of the labor contract to the general features of our industrial development.

The transition from individual to associated action on the part of labor seems to follow as a necessary corollary upon the changes in our industrial organization. The organization of industry promoted efficiency in production, the organization of labor followed because the laboring man desired a larger share in distribution.

In tracing out the historical development of the rights of labor in industry, we are compelled to recognize that their industrial as well as their legal rights have been won by laborers through a continuous struggle on their part to better their own condition.[1] It is impossible to gain a clear conception of the

[1]A mass of valuable evidence bearing both on the legal and on the industrial condition of workmen is to be found in the old conspiracy trials which usually followed strikes in the earlier period of our history. Most of the older trials were printed in pamphlet form and contain not only the opinion of the court, but large portions of the testimony, and usually the arguments of the opposing counsel. The writer knows of no other source so rich in data bearing on the evolution of the labor problem in this country. Among the trials most valuable for a study of the question are:

Trial of the Boot and Shoe Makers of Philadelphia, in the Mayor's Court, January Sessions, 1806. Taken in shorthand by Lloyd, Philadelphia, 1806.

People v. Melvin, 1810, Manuscript Record, *New York City Hall Recorder* for 1810, p. 207-16. Also see *People v. Melvin*, 1809 (*Trial of the Journeymen Cordwainers of the City of New York*) Yates, *Select Cases*, 112, and *People of New York v. Melvin et al.* 1810, 2 Wheeler's *Crim. Cases*, 262.

Trial of the Journeymen Cordwainers of Pittsburg, had at . . . The Court of Quarter Sessions for the County of Allegheny . . . December, 1815.

Commonwealth. Carlisle, 1821, Brightly's *Nisi Prius, (Pa.)* 36. (Master Shoemakers).

The People of New York v. Henry Trequier James Clawsey & Lewis Chamberlain, 1823, Wheelers *Criminal Cases*, 142, (Journeymen Hatters).

Commonwealth v. Moore et al. (*Trial of the Twenty-four Journeymen Tailors* before the Mayor's Court, Philadelphia, September Sessions, 1827.)

People v. Fisher, 1835, 14 *Wend.* (*N. Y.*) 9. (Journeymen Shoemakers).

The People v. Faulkner et al. (*Trial of the Twenty-one Journeymen Tailors of the City of New York*, Court of Oyer and Terminer, 1836.)

Thompsonville Carpet Mfg. Co. v. Wm. Taylor, Edward Gorman, and Thomas Norton, Tried before the Superior Court for Hartford County, January Term 1836.

Commonwealth v. Hunt, 1840, Thatcher's *Criminal Cases*. p. 609-642. Tried in the municipal court of the City of Boston. (Journeymen Bootmakers.)

Commonwealth v. Hunt 1842, 45 *Mass.* (4 *Metc.*) 111.

State v. Donaldson, 1867, 32 *N. J. L.* 151.

Master Stevedores v. Walsh, 1867, 2 *Daly*, (*N. Y.*) 1.

Snow v. Wheeler, 1873, 113 *Mass.* 186.

Old Dominion Steamship Co., v. McKenna, 1887, 30 *Fed. Rep.* 48.

State v. Glidden, 1887, 55 *Conn.* 46.

State v. Stewart, 1887, 59 *Vt.* 273.

Crump v. The Comomnwealth, 1888, 84 *Va.* 927.

Casey v. Cincinnati Typographical Union, No. 3, 1891, 45 *Fed.* 135.

Perkins v. Rogg, 1892, 28 *Wkly. Law Bul.* 32.

development of collective bargaining in the United States without an appreciation of the fact that the organization of labor constantly adjusted itself to the growth of our industries and that the enlightened self interest of workingmen led them to organize in order to secure a proportionate share of a constantly increasing output.

From the Individual Employer to Large Scale Production

Individual Workshops. Something over a century ago industry in the United States was in the domestic stage. The majority of the economic wants of our people were supplied by household industry. The wants which could not be provided for in the home itself were usually supplied by independent artisans working in their own little shops.[2]

However, evidences that the domestic stage of industry was coming to a close were everywhere at hand. Even before the Revolution there had been crude manufactures and at its close the inception of the factory system was under way. By the beginning of the last century our ship building had attained to considerable importance. Saw-mills supplied lumber for export. The iron and glass industries were established and the manufacture of textiles was beginning to be transferred to factories. Printing and publishing had also become an established industry; and in the building trades, carpenter work, stone cutting and brick making had become separate callings. Yet, practically everywhere labor and capital were still in the same hands. Free land opened a large field for industry and the scarcity of labor offered the man without property wide oppor-

Oxley Stave Company v. Coopers International Union, 1896, 72 *Fed.* 695.
Vegelahn v. Guntner, 1896, 167 *Mass.* 92.
Curran v. Gallen, 1897, 152 *N. Y.* 33.
Reform Club of Masons and Plasterers, L. A. 706, Knights of Labor of City of New York et al. v. Laborers' Union Protective Society et al., 1899, 60 *N. Y. Supp.* 388.
National Protective Association v. Cummings, 1902, 170 *N. Y.* 315.
Marx & Haas Jeans Clothing Co. v. Watson et al., 1902, 168 *Mo.* 133.

[2] The *New York City Hall Recorder* (manuscript record) furnishes much valuable data bearing on industrial relations during the latter part of the 18th and the early part of the 19th century. Although the volumes of the *Recorder* are not published prior to 1816, they are easily accessible in the new Criminal Court Building, New York City.

tunities for alternative employments. The individual laborer worked beside his employer from day to day and there were but few journeymen in any trade who could not look forward with reasonable expectation to being their own masters and managing a separate business in due time.

Under the system of small workshops the workman turned out a completed product which showed the measure of his workmanship and served to develop the creative and artistic instinct of the man. The mind which designed and the hand which executed were a part of the same personality and the complete development of the individual workman was possible. Again under this order the workman had an established place in industry. He was not dependent upon the will of others for work and the measure of his returns depended directly upon his industry and capacity. The market for disposing of his product was near at hand and the risk of loss was not great. The permanence and stability of his employment gave the artisan an established home in industry and the attendant rights made him a man of standing in his community.

During the period of individual workshops the employment relation was circumscribed by customary regulations recognized by both parties to the labor contract and the reciprocal rights of the individual employer and employee were hedged about by usages long established in the trade. The employment relation was a personal one and the interests of both parties were adequately protected by the individual labor contract. With the growth of industry, larger groups of men were employed in the same establishment. The division of labor, resulting in the co-operation of effort, bound the individual workman closer to his fellow-employee and the interdependence of laborers in the same industry increased with the size of the industrial unit. However, as long as the industrial strength of the individual workman approximated that of his employer there was little need for organized effort on the part of laborers in order to secure higher wages or better conditions of employment. It was not until concentration in industry had placed the employer in such a strong position that it was possible for him to fix the terms of employment with very little reference to the claims of his

employees, that workingmen began to see the necessity of acting together in order to secure equitable conditions in the labor contract.

Associations of workmen in the same craft for social and benevolent purposes had existed from early colonial days; but it was not until a certain concentration of industry had brought together considerable groups of laborers in the same locality that they began to exercise the functions of our modern trade unions.[3]

The beginnings of collective action on the part of labor were usually sporadic. Workingmen, having common grievances, formulated demands which they presented to employers. Occasionally the demands were acceded to, and, occasionally, when they were refused, the employees went on strike in order to gain concessions. Collective action on the part of employees in the same establishment was frequently carried on quite effectively without any regular organization, but until at least a nucleus for an organization was formed efforts to enforce demands usually resulted in failure. Such a result was almost inevitable at this stage. The demands were frequently excessive, or, at least, ill-timed. Or even if they were both just and expedient, they were more than likely doomed to defeat on account of the lack of organized means to enforce them.

With the growth of industries larger groups of laborers were gathered in the various factories and the close relationship between employer and workmen, known in former days, came to an end. Still, there was little recognition, on the part of the general public, of the changing conditions of industry and it was only in the older industries that there seemed to be a growing consciousness of diverging interests between employer and employees.

Growth of the Factory System. (About 1796—1830.) The development of our industries from 1796 to 1830 brought us from the weak beginnings well into the first stages of the factory system. Our older industries were gradually transferred from

[3]For an historical sketch of trade unions from early times see *Trial of the Journeymen Cordwainers of the City of New York*, 1809, (*People v. Melvin*), Yates' *Select Cases, N. Y.* 1811.

workshops to factories and the change from individual to organized production was well under way.[4]

The organization of industries on a larger scale changed the old conditions of employment. The individual workshop where master and journeyman had worked side by side could not compete with the factory. Under the new conditions the old customary relations between employer and employee gradually came to an end and the individual workingman came to realize that he must take a subordinate place in industry.

As the separation between the employing and employed classes became more clearly defined, the clash of conflicting interests became more frequent.[5] The interdependence of the two parties to the labor contract was not as apparent as it had formerly been and the claims of each in bargaining failed to receive that mutual consideration which personal contact in the employment relation had promoted under individual production. Under the new conditions of bargaining the relative strength of the two parties was also changed. The workingman occupied a less advantageous position because the economic strength of the employer had been enhanced by the concentration in industry. The growing size of the business unit enabled the employer to hold out with the accumulated strength of capital to back him in any dispute as to the terms of the employment contract while the individual workman found his position compromised by the lack of unity among his fellow employees.

The division of labor in the larger industries increased the interdependence of the workmen. The old vantage ground of individual production had enabled the artisan to create a com-

[4] For contemporary newspaper comment on industrial development see: *The Philadelphia Aurora*, Oct. 24, Nov. 6, and Nov. 8, 1803; *The Independent Chronicle, Boston*, Jan. 1, 1810; *The Massachusetts Spy* or *Worcester Gazette* Apr. 3, 1816; *The Freeman's Journal*, Cooperstown, N. Y., Aug. 6, 1821; *The Massachusetts Yeoman*, Worcester, Sept. 10, 1823; *The National Intelligencer*, Jan. 13, Feb. 27, and Mar. 9, 1832; *The American Daily Advertiser*, Philadelphia, Apr. 2, 1832; *The Boston Transcript*, Apr. 25, May 24, and July 8, 1833.

[5] For trials due to strikes see: *Commonwealth v. Pullis*, Mayor's Court. Philadelphia, January Sessions, 1806: *People v. Melvin*, 1810, manuscript record, *New York City Hall Recorder* for 1810, p. 207-16; *Trial of the Journeymen Cordwainers of Pittsburg*, Court of Quarter Sessions, County of Allegheny, Dec. 1815; *Commonwealth v. Carlisle*, 1821; Brightly's *Nisi Prius*, (*Pa.*) p. 36; *The People of New York v. Trequier et al.*, 1823, 1 Wheeler's *Criminal Cases* 142; *Commonweath v. Moore et al.*, Mayor's Court, Philadelphia, September Sessions, 1827.

pleted product. Organized industry compelled him to adjust his activities to the work of the group. *The old independence of the individual artisan was lost. The new strength of associated action was yet to be found.*

The unity of purpose which had formerly inspired the individual workman to the completion of the object in hand was dissipated as far as the effort of separate employees was concerned because the task assigned to each was but a part of the whole work. The mind of the employer derived new stimulus from the unification of the various operations in his factory; the workman was confronted with the possibility of becoming an easily replaceable cog in a great organization.

Gradually from the necessities of the case laborers began to act together where the immediate interests of the group were concerned. The first attempts at collective action indicate an effort largely unconscious to regain the strength of unity in bargaining which had characterized the workman under individual production. However, concentration in our industries proceeded at such a rapid rate that the readjustment of relations between employer and employee could not keep pace with our general industrial development.[6] Under the régime of individual production, labor had occupied an established place in industry and individual bargaining secured a fairly equitable distribution of the product. Under the new order there was a growing consciousness on the part of labor that its old vantage ground was slipping away. The increased production due to better industrial organization was plainly apparent, but it was also apparent that the distribution of that product did not bring labor a proportionately increasing return. The strikes which took place from time to time and the occurrence of general "turnouts" in the larger centers of industry indicate a growing recognition on the part of the workmen that concentration in industry required concert of action on their part if their interests were to be conserved under the new conditions of production. Even in this early period the organization of labor followed closely upon the growth and concentration of industry. But

[6]For the growth of industries see: *The Independent Chronicle*, Boston, Jan. 1, 1810; *National Intelligencer*, Feb. 27, 1832; *Boston Transcript*, Apr. 25 and July 8, 1833.

the process of readjustment in the relations of employer and employee failed to keep pace with our rapid industrial development. Employers usually resented what they considered ill-advised interference with "their business" and the majority of trade dispute resulted in strikes or lockouts in which the stronger party came out first without very much reference to the merits of the controversy.

Our social philosophy also favored the stronger side in the struggle for new industrial rights.[7] It seemed wise and expedient that employers should take advantage of every means to perfect the organization of industry and secure a consequent increased production; it was not so easy for employers or the general public to understand that the organization of labor was a necessary part, an inevitable result, of industrial organization and concentration. When labor attempted to organize in order to place itself on a more equal footing for bargaining with employers, it had to meet, not only the self-interest of employers but an overwhelming public opinion which almost uniformly condemned labor organizations. Unwise and precipitate action on the part of new organizations resulted in strikes and lockouts which served to increase the tension of strained relations with employers. Old industrial relations were disturbed beyond the point of equilibrium and a period of storm and stress invariably followed the early attempts of organized labor to secure a part of the increment of organized production.

Extension of the Competitive Field. (About 1830—1861.) So long as the single establishment was the unit in industry, and competition was limited to a small field, labor organizations had little connection with members of their trade in other localities. The conditions of employment were largely determined by the individual contract, and the relations so established were but slightly modified through occasional concert of action on the part of employees.

The development of transportation and communication during the second quarter of the last century extended the limits of

[7] Compare the opinion of the Court in *The People of New York v. Trequier et al.*, 1823, 1 Wheeler's *Criminal Cases* 142, with the recent decision in *National Protective Association v. Cummings*, 1902, 170 *N. Y.* 315.

the competitive field and a corresponding expansion took place in the business unit. Industries which had before depended largely upon a local market extended their field of operations wherever transportation facilities provided opportunities for disposing of their products.

With the extension of competition over wider fields new phases of the labor problem presented themselves. The direct competition between laborers for the same employment was increased as the available supply for any given industry could be drawn from a larger territory. However, the force of this condition was largely overcome by the alternative opportunities which remained open to the laborer, particularly the large areas of free land awaiting settlement. Another condition which had a direct and immediate effect was the greater competition which developed between different establishments in the same industry. In the struggle to secure larger markets, the separate establishments found it necessary to employ all of the economies possible in the business. Wages, forming such an important element in cost, offered an inviting field in which to reduce expenses. The stage of organization reached by our older industries after they were able to utilize transportation and communication facilities is in marked contrast to the degree of organization attained by workingmen. The introduction of labor-saving inventions. the division of labor, the growth of the business unit constantly extending its operations to cover the larger competitive field created by improved transportation, all emphasized the difference in bargaining strength between the individual laborer and the employer at the head of an organized business unit. Concentration and organization in industry continued to proceed hand in hand with the extension of transportation facilities and the increasing size of the industrial unit brought larger groups of workingmen under the same management. That the organization of labor lagged far behind the organization of industry during the second quarter of the nineteenth century is plainly apparent when viewed from the perspective of the present day but it was not so apparent to either employers or workingmen of that time. However, as the limits of competition in the same trade continued to widen and the industrial unit increased in size, workingmen began to extend their organizations. Local

unions multiplied in the older crafts, and, in the early thirties, the separate organizations in the various trades in the same localities began to unite for common action.

In the period from 1830 to 1860 there was not only an increasing number of unions organized in newly developing industries but the older unions were gradually extending their sphere of influence and were becoming factors which employers had to reckon with in determining the conditions of employment. Employers occupied with the extension of their business over a larger competitive field scarcely realized the augmented strength of their own position in relation to their workingmen, and with competition bearing heavily upon those who had before been secure in the possession of a local market, conditions seemed to offer difficulties enough without the addition of labor troubles. They resented the interference of their employees in "their own business" and frequent strikes and lockouts bear testimony that the rapid concentration in industry had failed to give opportunity for the adjustment of the employment relationship to the new industrial conditions. On the other hand the laborers had no plan of organized collective action to bear against the new forces which confronted them. In earlier decades they had been wont to strike in single shops and in cases of common grievances had even conducted general turnouts. But at this stage collective action on the part of workingmen was still conditioned by the limitations of local organization while the industrial unit in which they found employment was extending its operations over territorial and even national competitive areas.

The opportunism of trade unionism was baffled by the new situation for the power of the local labor organization was outclassed at practically every point by the strength of the organized industrial unit. A half-conscious recognition on the part of workingmen that their interests failed to receive adequate consideration began to impress itself upon the thought of the time.[8] Recognizing the limitations of their local trade organi-

[8] Contemporary books and pamphlets reflect renewed interest in the labor question. See: *Facts for the Laboring Man by the Laboring Man*, Newport, 1840; *Reply to Brownson's Article on the Laboring Classes*, Cambridge, 1841: Shaw, F. G. *The Organization of Labor and Association*, N. Y. 1847. Aiken, J. *Labor and Wages at Home and Abroad*, Lowell, 1849; Kellogg, E. *Labor and Other Capital: The Rights of Each Secured and the Wrongs of Both*

zations without fully understanding the new conditions of industry, leaders of workingmen's societies at this time began to advocate united action for the purpose of social and political propaganda.

This was one phase of the movement toward a broader realization of democracy which so peculiarly characterized the third and fourth decades of the past century. The wave of moral sentiment and altruistic feeling which swept over our people in that period and strengthened the protest against slavery was thus reflected in the labor movement of the time. Various co-operative experiments interested the general public and the propaganda of idealists wakened a consciousness that social and industrial conditions demanded improvement, but the universality of view entertained by the social reformers of the time deprived them of the advantage of a distinct and definite aim and it remained for organized labor to better conditions of employment by striking for shorter hours and higher wages.

The agitation for shortening the work day spread over the New England states and over New York, Pennsylvania, and New Jersey. That there was need for this reform is evident from the fact that the work day in general remained "from sun to sun," and there were numerous cases where it was even longer. An interesting resolution bearing on excessive hours was adopted in 1846 by the factory operatives of Peterboro, New Hampshire, who resolved:—"That although the evening and the morning is spoken of in the Scripture, yet in that book no mention is made of an evening in the morning. We therefore conclude that the practice of lighting up our factories in the morning, and thereby making two evenings in every twenty-four hours, is not only oppressive but unscriptural."[9]

Continuous agitation had secured the adoption of the ten-hour day in the government workshops in 1840, but in private industry the prevailing hours of work remained from sun-rise to sun-set. However, the continued agitation of social reformers and the increasing number of successful strikes were beginning to

Eradicated, N. Y. 1849; *Address of the Ten Hours State Convention Held in Boston*, Sept. 30, 1852; Dixon, J. *American Labor; Its Necessities and Prospects*, N. Y., 1852.

[9] McNeill, George E. *The Labor Movement*, ——, 107

have their effect on public opinion. The changing attitude appears in the newspaper comment[10] and in the pamphlet literature of the time. In 1835 a combination of Schuylkill merchants, who pledged themselves not to hire laborers unless they agreed to work from sun-rise to sun-set and at a rate not exceeding $1.00 per day, was condemned by a writer of the time on the ground that combinations on the part of employers were as wrong as those of workmen.[11] That the public were also becoming more sympathetic toward workmen on strike is indicated by the following quotation from the Rochester *Democrat* in 1837: "The excitement among our laborers continues. About 150, yesterday, proceeded to the corps of workmen engaged on the east side of the river . . . and requested them to stop work. They immediately did so, throwing aside their shovels and pick-axes. There is a settled determination among the laborers neither to comply with the terms of the contractors themselves nor to allow others to do so. They cannot be censured for refusing to work fifteen hours for six shillings.[12] In a strike of the mill operatives of Salisbury, Massachusetts, in 1852, the strikers had the sympathetic endorsement of John G. Whittier, T. W. Higginson, and other men of influence. In connection with the greater consideration which laborers were beginning to receive at the hands of the general public there is also a noticeable change in the tactics adopted by employers to break the demands of their workmen. Conspiracy trials could no longer be depended upon to convict striking employees as a matter of course,[13] and the labor press was beginning to give expression to the claim of workmen that they were entitled to some voice in determining the conditions under which they sold their

[10] For comment favorable to workingmen see the *New York Evening Post*, June 1, 1836; and the *Public Ledger*, June 2, and July 14, 1836.

[11] New Jersey, Bureau of Statistics. *Report*, 1885, 272.

[12] *Niles Register*, July 8, 1837.

[13] For a more liberal line of judicial decisions see: *Thompsonville Carpet Mfg. Co. v. Wm. Taylor, Edward Gorman, and Thomas Norton*, Tried before the Superior Court for Hartford County, January Term, 1836.

The people of New York v. Jonathan H. Cooper, Kennith Defries, Frederick Brush, Robert B. Lawton, Elisha Babcock, Herman Stoddard, John Marcellus, and Sidney Wandle, (Trial of the Eight Journeymen Cordwainers at Hudson, N. Y.) Court of General Sessions, June, 1836.

Commonwealth v. Hunt, 1842, 45 *Mass.* 111.

labor.[14] Employers could not escape the contagion of the new spirit. They felt the necessity of a new basis of vindication for their part in labor disputes and from this time on we hear much of "the right of the employer to run his own business" and the folly of submitting to "outside dictation" in managing "his own affairs." This new attitude was taken in the strike of the Salisbury mill operatives, before alluded to. A conciliatory letter proposing a compromise on the part of the operatives was thus answered by the mill agent: "I cannot consistently accept the proposition . . . for a settlement of the difficulties now existing. . . . The company in whose behalf I act cannot allow any dictation in regard to the rules and regulations by which they will be governed in the management of their mills; and deprecating, as they do, all combinations by the operatives to resist their authority, . . . they have come to the conclusion that when the machinery is started, be it now or at any future time, it must be by men who have had no participation in the late movements to resist their authority."[15] The operatives finally found other employment and the mill owners reopened their factory with foreign laborers. We have here a case where the operatives were too independent to submit and the employers were strong enough to resist the demands of their workmen, but not without great financial loss and the serious crippling of their business.

Numerous strikes for shorter hours and better wages,—and occasionally for the enforcement of union rules,—continued throughout the fifties. Sometimes the strikers were successful, but more often they were unable to enforce their demands. But more important than any immediate success as regards hours or wages was the development within the trade unions themselves.

We have already noted the tendency which appeared in the early thirties, toward a closer union of the various trade organizations in the same locality. "The General Trades-Union of

[14] See the *National Laborer* for June 18, and 25, 1836 for criticisms on the decision of the Court in *The People v. Faulkner et al.* (*Trial of the Twenty-one Journeymen Tailors of the City of New York*, Court of Oyer and Terminer. 1836.)

[15] Massachusetts, Bureau of Statistics of Labor, *11th Annual Report*, 1880. *Strikes in Massachusetts*, 1830–1880, *Reprint*, 13.

Development of Large Industries (About 1861–1886.) The concentration of our industries in large establishments proceeded at a rapid rate during the Civil War. The adoption of improved machinery, to take the place of labor withdrawn by the war, necessitated a greater division of labor and the reorganization of separate industries on a larger scale. The development of transportation and communication had widened the limits of the competitive field, and the concentration of wealth had put large masses of capital under the same management. Employers of labor had great resources at hand and great interests at stake. On the other hand, the men who had returned from the war to take up work in shop or factory were more than ever ready to wager a trial of strength to gain new concessions from their employers. Labor organizations increased rapidly in membership. The New York *Tribune* of April the thirtieth, 1867, estimated that there were 30,000 men in "workingmen's societies" in New York City alone, and that Brooklyn and other adjoining towns would furnish 20,000 more. The organization of labor in other industrial centers kept pace with the movement in New York City.[24]

From 1860 on, the distinction between organizations holding to trade autonomy and those including members of all crafts, in the same Locals, became marked. After the war there was again a tendency toward labor organizations based upon the idea of political and social propaganda for the advancement of the working classes and numerous labor orders and societies of this nature sprang into existence. The remarkable concentration of industry during and immediately following the Civil

[24] Wide-spread interest in labor questions is reflected in contemporary pamphlets and books. See: *Hours of Labor, North American review,* January, 1866; *The Labor Question, Extracts, Magazine Articles, and Observations Relating to Social Science and Political Economy as Bearing upon the Subjects of Labor, Trades-Unions, Co-operative Societies,* Chicago, 1867; Winn, A. M. *Address before California Mechanics' State Council.* June 3, 1870, on the *Eight Hour Law,* San Francisco, 1870; Johnson, S. *Labor Parties and Labor Reform,* Boston, 1871; *Address from Friends of the Workingman,* Boston, 1872; Green, B. E. *The irrepressible Conflict Between Labor and Capital,* Phila. 1872; Larned, J. N. *Talks about Labor, and Concerning the Evolution of Justice between the Laborers and the Captalists,* N. Y. 1876; Hughes, T. *The Labor Question and Other Vital Questions,* N. Y. 1877; Kilgore, D. Y. *Oration July 4, 1879, at the Eight Hour Demonstration, Philadelphia,* From *"The Trades,"* Philadelphia, Nov. 8, 1879; McAuleff, J. *Address on Labor against the Eight Hour Movement,* From *Chicago Times,* Sept. 1, 1879.

thus bringing within a unified jurisdiction groups of laborers engaged in similar industries within possible competitive limits. The movement toward the organization of national and international trades-unions is illustrated during the fifties by the formation of many strong societies. A "National Convention of Journeymen Printers" met in New York in 1850. The following year they met again, and in 1852 they formed the permanent organization now known as the "International Typographical Union." The "National Trade Association of Hat Finishers" was organized in 1854,[21] the "National Cotton Mule Spinners Association of America" in 1858,[22] and the "National Union of Iron Molders" in 1859.[23] Other trade organizations which had reached considerable memberships followed the example set by these unions and united into national associations. It is interesting to note how the older trades first attained to national organization; we shall find later on that they also led in the development of boards of arbitration and conciliation, and, eventually, in developing systems of collective bargaining.

The period closing with 1860 was a period of weak organizations. For three decades there had been a considerable development of trade-unionism, but the transference of production from the workshop to the factory had gone on with such rapid strides that the consequent changes in the relative strength of employer and employee left the latter in an unfavorable position. The conditions of employment were usually fixed by the employer, and the continuous struggles of workmen to better their own condition were generally unsuccessful and frequently resulted disastrously to their unions. However, the series of unsuccessful strikes had taught the necessity of closer cooperation. Instead of being baffled by continuous defeats the unions of the time evolved the National form of trade organization and thus put themselves on a basis for collective action in future disputes.

[21] *National Trade Association of Hat Finishers' Proceedings —— Special Convention ——* 1882, 1.

[22] *National Cotton Mule Spinners Association of America, Constitution and General By-Laws,* 1890, 1.

[23] Sylvis, William H., President of the Iron Molders' International Union, *Annual Report.* In *Proceedings of the Eighth Annual Session . . .* 1867, 10.

trary agrarianism or violence; and shall use only such instrumentalities as are sanctioned by demonstrated principles of moral philosophy and social science, the universal interests of humanity, and a philanthrophy . . . above all distinctions of class, sex, creed, race or nationality.''[26]

There can be no doubt but that these organizations were adapted to political agitation and to general social reform, and this seems to have been the object of many of the "labor orders" which sprang into existence soon after the Civil War. While this was all very well, the times demanded an extension of specific industrial rights for laborers, and, to secure these, the organizations holding to the lines of trade autonomy had the more efficient organizations. With concentration in industry organization based on trade autonomy is necessary for effective systems of collective bargaining and, throughout all the varying phases of trade-unionism in the United States, collective bargaining is the point toward which organized labor has been tending. Accordingly as the lines of industrial organization became more clearly defined and as labor disputes brought employers and employees in the same industry face to face with specific conditions there was a gradual extension of the old idea of organization based upon trade autonomy.

From 1860 to 1881 the work of organizing local into National and International unions went on. Among the organizations so established during this period were:—the Brotherhood of Locomotive Engineers, founded in 1863; the Cigar Makers' National Union, organized in 1864; the Glass Bottle Blowers' Association, and the Bricklayers' and Masons' International Union, both established in 1865: the Order of Railway Conductors, instituted in 1868; the Brotherhood of Locomotive Firemen, and the German-American Typographia, both dating from 1873; the National Union of Horseshoers, founded in 1874; the National Marine Engineers, established in 1875; the Amalgamated Association of Iron and Steel Workers, formed in 1876; the Granite Cutters' National Union, organized in 1877 and the Flint Glass Workers Union, established in 1878. The establishment of the Federation of Organized Trades and Labor Unions in

[26] *Sovereigns of Industry, Constitution* 1874, 1-2.

1881 gave a further impetus to the organization of national and international unions. The Brotherhood of Carpenters and Joiners and the International Brotherhood of Boiler Makers and Iron Ship Builders were formed in 1881, and the Operative Plasterers' International Association in 1882. The Brotherhood of Railroad Trainmen, the Journeymen Tailors' National Union, the Lithographers' International Protective and Beneficial Association, the International Wood Carvers' Association, and the Mosaic and Encaustic Tile Layers all date from 1883. In 1886 the Order of Railroad Telegraphers, the Switchmen's Mutual Aid Association, the Metal Polishers' Buffers', and Platers' International Union, the Bakers' and Confectioners' International Union, and the United Brewery Workmen were added to the list of trades organized into national or international bodies. Other trade organizations might be added to the list given; those named suffice to show that the two decades following the Civil War saw not only the development of large industries which extended their operations over the entire national area but that workmen were also beginning to recognize the necessity of broader organization.

The characteristic feature of the labor movement during the two decades following the Civil War was the intense bitterness excited in strikes[27] in which each side insisted on enforcing one-sided demands. With the captains of industry strong in the vantage ground in which the trend of events had placed them, and organized labor strong in the confidence which invariably follows new organization, there was bound to be a clash of interests. An epidemic of strikes and lockouts broke out all over the United States and until well into the eighties a period of storm and stress held sway in most of our industrial centers. The most serious troubles were the strikes in the coal mining regions of Ohio and Pennsylvania which continued almost without interruption from 1869 to 1881, and the great railroad strikes of 1877. Riot, and destruction of lives and property,

[27] Pennsylvania, State Legislature, Joint Committee appointed in 1878 to "examine into all the circumstances attending the late disturbances of peace . . . known as the railroad riots . . .". For extensive extracts from the report of this committee see Pennsylvania, Bureau of Industrial Statistics, *Report*, 1880-81, 322 ff.

and the intervention of the military power of the states and the federal government figured in these labor troubles and made them the most disastrous as well as tragic of any in our history.[28] But even in the less disastrous strikes and lockouts there was an intensity of feeling and a determination on both sides to win at any hazards which would stamp this period as one of industrial turbulence even were the mining and railway troubles eliminated. Disputes which resisted all attempts at settlement until they resulted in the destruction of the local union or the bankruptcy of the employer were of frequent occurrence.

In 1863, a wool hat manufacturer of Brooklyn became a bankrupt through his efforts to break up the local union of the Wool Hat Finishers' Association.[29] On the other hand, in the same year, manufacturers in Lynn and Charleston, Massachusetts, succeeded in breaking up the local unions of the Morocco Finishers who had gone on strike for the purpose of enforcing union rules. In 1867, the local union of Iron Molders at Pittsburg was completely broken up. Endorsed by the Molders' International Union they went on strike against a 20 per cent reduction in wages. Donations to the amount of $40,000.00 from the International Union and from outside sources enabled them to hold out, and they expended $18,000.00 in building a foundry to be run on the cooperative plan. The enterprise was a failure and at the end of nine months they returned to work for their old employers on the condition that they would sever all connection with their union.[30] In a strike of coal miners at Braidwood, Illinois, in the same year, Bohemians and Italians were imported to take the place of the strikers;[31] and in 1870, in a shoe factory in North Adams, Massachusetts, the proprietor

[28] For contemporary statements see: Dacus, J. A. *Annals of the Great Strikes in the United States; a Reliable History and Graphic Description of the Causes and Thrilling events of the Labor Strikes and Riots of 1877*, Chicago, 1877; Martin, E. W. *History of the Great Riots: Being a Full and Authentic Account of the Strikes and Riots on the Various Railroads of the United States in the Mining Regions . . . together with a Full History of the Mollie Maguires.* Philadelphia, (1887); *Philadelphia and Reading Railroad Co. Statement to the Public*, 1877.

[29] McNeill, George E. *The Labor Movement*, 394.

[30] Massachusetts, Bureau of Statistics of Labor, *Eleventh Annual Report* 19.

[31] McNeill, George E. *The Labor Movement*, 258.

imported Chinese to take the place of his former employees who insisted on belonging to the Order of St. Crispin, a strong organization of boot and shoe workers at that time.[32] These illustrations are merely typical of hundreds of disputes which were being waged in practically every large industry in the country. The records of the Sons of Vulcan show that there were 87 legalized strikes within their jurisdiction from 1867 to 1875. From 1871 to 1875 there were 78 strikes under the auspices of the Cigar Makers' International Union; and in his annual report for 1879, the president of the Amalgamated Association of Iron and Steel Workers said:—"The history of the association furnishes no parallel to the past year for strikes and disputes. We have not been without a strike for a single day in the year." There is no doubt but that both parties to all of these controversies have sufficient grievances to justify their action in their own eyes. Meanwhile the general public suffered.

The strikes and lockouts which characterized this period were mainly fought out in industries which had advanced to a marked degree of concentration. Gradually the working men learned the necessity of adjusting their organizations to the exigencies which confronted them and the development of strong trade unions to offset the strength of the employer at the head of a consolidated industry finally brought the contending parties to the point where sheer exhaustion compelled them to meet each other in a business-like way for the settlement of disputes in joint conferences. Through hard-earned experience the mutually exhausted parties began to reach the stage where they were able slightly to appreciate each other's view-point. Even in the early part of this period the uncompromising attitude of employers and employees occasionally gave way to reason and mutual concessions, and we can trace back many of our systems of collective bargaining to their small beginnings, in the appointment of conference committees during this period of storm and stress.

The various devices which had been adopted before 1886 to secure concert of action between employers and employees served

[32] Massachusetts, Bureau of Statistics of Labor, *Eleventh Annual Report*, 28.

to open the way for the systems of collective bargaining which have been developed since that time. The Federation of Organized Trades and Labor Unions,[33] established in 1881, also helped to strengthen the separate unions in their efforts to combine the workmen of the several trades into effective organizations for collective action.

It must not be forgotten that the systems of collective bargaining established before 1886 were of a tentative, rather than of a permanent, nature. But the important thing to consider is that our older industries had reached the stage where it was possible for representatives of employers and employees to confer with each other in a business-like way. A feeling of mutual respect and a willingness to make mutual concessions was also coming into evidence and presaged the possibility of more harmonious relations for the future.

Testimony to this new spirit in industry was given by Abram S. Hewitt, vice president of the Iron and Steel Manufacturers' Association, in a lecture which he delivered in Cincinnati in the spring of 1882. In speaking of labor organizations, Mr. Hewitt said:—"Labor is thoroughly organized and marshalled on the one side, while capital is combined on the other. . . . The contending forces are thus in a condition to treat. The great result achieved is that capital is ready to discuss. It is not to be disguised that until labor presented itself in such an attitude as to compel a hearing, capital was not willing to listen, but now it does listen. The results already obtained are full of encouragement: the way to a condition of permanent peace appears to have been opened."[34] Mr. Hewitt's statement presented a concise view of the position to which labor and capital had attained in our older industries; but it was far from representing the condition of affairs on the whole. Similar contests to those which had been fought out by the older unions continued in industries which were still in an earlier stage of development. However, the development of boards of arbitration and conciliation within the trade proceeded at such a rapid rate in our older industries that the movement toward col-

[33] Reorganized as the American Federation of Labor in 1886.
[34] Quoted in the *Cigarmakers Official Journal*, April 15, 1882.

lective action and the development of systems of collective bargaining became the characteristic features of the labor movement for the next two decades.

Larger Scale Production. (About 1886–1902.) The last two decades of the 19th century were marked not only by continued concentration in industry, but also by the integration of allied industries into consolidated business units. The effect upon labor organizations early became apparent. The concentration of industry into larger and larger business units extending over constantly widening competitive areas favored the organization of labor along the lines of trade autonomy and resulted in the formation of national and international unions. This form of organization protected both employers and employees from competitive pressure where both parties felt it keenly. On the side of labor widely extended organization based on trade autonomy lessened the competition of workingmen in the same employment while for competing employers conditions were more nearly equalized as regards the cost of labor.

After 1886 marked progress was made in perfecting the systems of collective bargaining established in our older industries and joint conference committees also developed in some of our newer industries which have shown a tendency toward rapid concentration or which employ large bodies of workmen under the same general management. Where the conditions of industry admit of wide-reaching organization and collective action on the part of both employers and employees local systems of collective bargaining have shown a tendency to develop on a national scale. If the history of our older industries has any significance it is only a question of time until the informal conferences and the temporary arbitration committees now found in our newer industries will develop into regular joint conference systems.

We thus pass from the stage of individual industry and individual contract to the stage in which reciprocal rights and obligations in the employment relation are largely determined through wide-reaching systems of collective bargaining.

Gradually, the stage of individual industry has given way

to that of organized industrial activity. More slowly the individual labor contract is giving way to the collective agreement. Still more slowly, but yet withal surely, an awakening public conscience is beginning to recognize that ethical ideals in industry can be realized only when reciprocal rights and obligations between employer and employee are constantly adjusted to an ever changing and expanding industrial life.

CHAPTER III

FROM INDIVIDUAL TO COLLECTIVE BARGAINING

Stages in the Development of Collective Action

Summary of the General Movement

The close connection between the change from the individual workshop to large scale production and the change from the individual contract to collective bargaining is apparent even in a brief survey of our industrial history.

The general features of this development are at times plainly outlined by a succession of events all tending to emphasize the prevailing tendency of the period. Again they are obscured by a mass of divergent interests and conflicting phenomena which seem to defy any attempt to characterize prevailing conditions. Yet throughout all the succession of events there is found active the principle of organization which gradually transformed a simple domestic system into a complex industrial society.

The successive stages in the development of collective action between employer and employee attain a new significance when viewed from the standpoint of the evolution of industry. Viewed from this standpoint we no longer look upon industrial society as fixed in rigid grooves of custom and tradition but as responding to forces which bring about constant modification. In the process of adjustment the stress of the occasion may cause the destruction of worn-out forms and inadequate philosophies, but adjustment is the price which must be paid for the sake of a more complete economic life.

In the evolution from a simple to a complex economic life, industrial society in the United States has had ample opportunity to test its capacity for adjustment to changing conditions. That this adjustment has at least in art taken place, a brief sum-

mary of changes affecting the employment relationship will indicate.

Customary Regulation. Beginning with the period of individual workshops under domestic industry, the employment relationship was defined by the individual contract. Customary regulations protected the interests of master and workman and the rights and obligations of each were usually adjusted in the light of reciprocal advantage.

The Beginnings of Organization. (About 1796—1830.) With the growth of the factory system and the consequent organization of our industries on a larger scale, the old personal relationship between employer and employees gradually disappeared. Competitive conditions began to bear heavily upon employers and the reduction of wages offered a tempting field for economies in production. Employers inclined to continue customary conditions had to meet the competition of other employers in the sale of their product, while the workman long secure in the market for the sale of his labor began to feel the pressure of the competition of workers available from larger competitive areas. This two-sided competition changed the old condition of production and disturbed the customary relations between employer and employee. Confronted with the new conditions, the workmen of the time sought to realize some of their old time strength and importance by united action against common grievances. Largely unconsciously to meet the exigencies of particular occasions, workingmen developed the rudiments of organization. The development of labor organizations as militant bodies for the purpose of securing a larger share in distribution can usually be traced in particular employments to periods in which customary conditions were disturbed by concentration in industry.

Weak Organizations. (About 1830—1861.) The extension of the competitive field through the development of transportation and communication widened the scope of operations for the successful employer while the relative position of employees in such industries was weakened. The subsequent organization of local into national bodies on the part of trade unions again

helped to equalize conditions in our larger industries and put labor into a more advantageous position for bargaining with employers.

Organization and Conflict. (About 1861—1886.) The rapid growth of industries after the Civil War and the consolidation of separate plants into single business units confronted labor unions in their efforts to secure a larger share of the output. With strong organizations on both sides a period of storm and stress invariably followed the attempt of either side to gain any advantage. New factors which made conditions more difficult for both sides were also making themselves felt in industry. Employers were hard pressed by ruinous competition in prices, while laborers were threatened with a lower standard of life from the pressure of foreign immigration. The difficulties of the situation led employers to resist what they deemed untimely "interference with their own business" by labor organizations while employees backed up their demands with wide-reaching strikes. The uncompromising attitude of both sides in the employment relationship resulted in strikes and lockouts which characterized this entire period as one of unusual industrial turbulence. Employees denounced combinations of capitalists for conspiring to destroy labor." Employers refused "recognition" to unions which were constantly growing more insistent in their demands.

Recognition. (About 1886–1902.) Nevertheless, organization on both sides continued and, finally, after each side had learned the strength of the other through hard-earned experience, the two parties to the labor contract reached the point where they were ready to treat with each other on a basis of mutual respect. Joint conference systems developed in numerous industries which had reached the stage of large scale production,—wide-reaching industrial organization on the part of employers gradually bringing them to the view-point where they were willing to concede a measure of organization to employees.

A striking feature of the last two decades of the nineteenth century was such an extension of labor organization over wide competitive areas that employers were in their turn outclassed

in many industrial disputes on account of the compact organization of entire groups of laborers in similar industries. This wide-reaching organization of employees bound together by various ties of amalgamation and federation encouraged a corresponding development of employers' associations organized for the express purpose of meeting the strength of organized workingmen in determining the conditions of employment. This final development of federated groups of labor, organized primarily along the line of trade autonomy with a secondary organization of groups of allied workers in the same industry for the purposes of collective bargaining, brings us to the most characteristic tendency of the labor movement of the present day. However, a comparative analysis of labor organizations in different industries brings us face to face with the fact that it is only in our older industries that this complex form of organization has been quite generally evolved.

Comparison of Trades in Various Stages

The various forms of collective action existing in our industries at the present time portray every stage of development. Certain trades are entirely unorganized, others have reached the stage of strong local organization, while still others have developed collective bargaining upon a national scale. In still further stage of organization are those complex systems whether local or national in which the form of bargaining has united the characteristic features of both trade autonomy and industry autonomy into a federate or group autonomy. This method of bargaining, adapting itself to the prevailing form of organization in industry, is found especially well developed in the printing and in the building trades.

In the printing trades the splitting off of specialized groups of workmen from the parent body of the International Typographical Union gave rise in turn to separate unions for printing pressmen, for bookbinders, and for similar groups. These special organizations while having many separate interests, still retain many matters in common with other crafts in the printing industry and on the basis of these common interests they have entered into agreements in which common interests are

settled while separate matters are left for separate adjustment by each craft.

In the less specialized stage of printing, one organization based on the idea of trade autonomy was inclusive enough to unite practically all the workmen in the industry. With the separation of processes in the trade new crafts arose and on the basis of common interests new unions were formed; but the industry itself, while constantly differentiating into various departments, still presented business units within which the various processes were grouped under unified ownership, and so the separate unions formed on the ground of the differences in their several crafts were obliged to re-unite to meet the strength of common employers in bargaining.

This development in the printing industry shows trade autonomy and industry autonomy merging into a more complex group autonomy in which the principles of both ideas are united for effective collective bargaining.

The building trades afford another illustration of the organization of labor primarily along trade autonomy lines with a secondary organization of groups of allied trades into councils which aim to cover the main operations in the entire building industry in a given locality.

The printing and building trades are merely typical illustrations of labor organizations adapting themselves to complex conditions. Where industrial organization has become highly specialized and complex, trade autonomy and industry autonomy have shown a tendency to merge into the more highly organized form of group autonomy.

Among other wide-reaching systems of collective bargaining are those found in the metal and machine working trades; in transportation; in mining; in the glass and pottery trades; in wood working; in the textile, clothing, and allied trades; in cigar making and tobacco working; in retail clerking; and in about a score of miscellaneous trades the chief of which include the following workmen: bakers and confectioners, brewery workmen, butchers and meat-cutters, electrical workers, hotel employees and bar tenders, leather workers, stationary firemen, horse shoers, team drivers, letter carriers, stage employees, musicians, and newspaper writers.

The systems of bargaining for these various groups differ as greatly as do the industries within which they are found. Confronted with this fact the question arises, what is the basis upon which these varying forms of organization rest? Why do certain industries present wide-reaching systems of bargaining in which employer and employee meet on the common basis of thorough organization on each side while others have developed but fragmentary forms of collective action? Again, why do certain industries retain the individual form of contract long after concentration in industry enables the employers to act collectively in determining the conditions of the labor contract? Or, why does the opposite condition prevail in certain industries where strongly organized unions are able to fix conditions of employment without due consideration to the rights of employers? Why is the degree of organization in many industries so unequal, as between employers and employees, that bargaining upon the basis of mutual rights and obligations is impossible? Accurate conclusions on these questions cannot be reached without a comparison of the various stages of collective action in separate industries.

Stages of Collective Action in Separate Industries

While the close connection between the organization and concentration of industry and the evolution of collective action on the part of labor is apparent even in a general historical survey of our industrial development, the real significance of the changes in the labor contract does not appear unless those changes are co-ordinated with the development in our separate industries. If there is any one thing above all others which a careful study of our industrial history reveals, it is the fact that our different industries have been developed at different periods in our national life and that the relation between employer and employee in any industry at any given time has in a large measure been dependent upon the stage of development which that particular industry has reached.

While there is a general chronological development, one might as well attempt to assign the stone age in the industrial evolution of different races, to the same chronological time as to

attempt to fix chronological periods for the entire group of our industries in their separate development from individual toward collective action.

This becomes apparent when we remember that our different industries have presented the various stages of progress, from individual to associated action, in practically every decade of our history. Even in the early stages of our history we have found certain industries in a relatively high state of organization, and in succeeding decades we find industries in their infancy along with those which supply the markets of the world. Corresponding with this variety of industries, we have found a diversity of relations between employers and employees. This diversity existing in our different industries at the same time has tended to obscure the general trend of progress in the employment relationship. Where all the various stages of development are found co-existing, it is difficult to distinguish the older from the newer phases, and the process of our growth has been so complex that an historical analysis is necessary to reveal the trend of our industrial forces.

Yet when we trace the changes in the labor contract in its transition from an individual to a collective basis and co-ordinate those changes with the corresponding changes as they took place in our separate industries, we find that throughout all the succession of events there is a general thread of connection which not only suggests but compels a recognition of a causal connection between the transition from individual to organized industry, and the change from the individual contract to collective bargaining. This dependence of collective bargaining upon industrial development is illustrated over and over again in the histories of our various industries. We thus find a basis in industry for the changes in the employment contract.

Printing. In the printing industry the nature of the work early required the setting up of regular establishments where groups of laborers were employed. Organization accordingly developed readily among the journeymen. An account of the annual meeting of the Philadelphia Typographical Society given in the Philadelphia *Aurora* in 1803 indicates that there was a numerically strong society of typographical workers in that

city at that date.[1] The New York Typographical Society founded in 1809,[2] was a strong factor among printers in New York City for more than a decade. After its incorporation in 1818, it retained its beneficial features but relinquished active aggression in trade matters.[3] In 1831 followed the organization of the Typographical Association of New York, a society devoted more especially to trade interests. Organization among printers extended rapidly throughout the country and local societies seem to have sprung up wherever the printing industry flourished.[4] As early as 1816 an attempt was made to unite the typographical unions in various parts of the country into a "National Union" but on account of objections by the societies of Boston and Philadelphia the plan was not completed.[5] Finally in 1852 the International Typographical Union was established.[6]

The rapid development of the printing industry is evidenced by newspaper comment on the growth of various printing establishments. In commenting on "printers' enterprize," the Boston *Transcript* of July 8, 1833, quoted the New York *Gazette* to the effect that in the establishment of the Harpers of New York there were seventeen presses and one working by horse power equal to the work of six or seven common presses and that the persons employed in their stereotyping, printing, and book binding department numbered one hundred and forty: the comment concludes with the statement, "it was but a few years since the Harpers were journeymen printers." Continued concentration in the printing industry throughout a half century

[1] *Philadelphia Aurora*, Nov. 6, 1803.

[2] See preface to Constitution, *By-laws, and Rules of Order of the New York Typographical Society, Revised March, 1887*, New York. 1887.

[3] See the corporate charter granted to the Society by the New York Legislature in 1818.

[4] In 1822 a typographical society in Albany, New York. struck on account of the employment of a "rat" in one of the printing offices. See Ely, *The Labor Movement in America*, 39.

In 1832 there were at least two typographical societies in Cincinnati, Ohio. The *National Intelligencer* of Mar. 9, 1832, in speaking of the members of the typographical societies at Cincinnati said,—"the workies" had planned to give the annual dinner for their societies at $2.00 per plate, but instead donated

[5] *Union Printer* quoted in the *Cigarmakers' Official Journal*, May, 1888.

[6] *International Typographical Union Official Program and Souvenir, Golden Jubilee Convention*, Cincinnati, Aug. 11–16, 1902.

enabled the employer to occupy the vantage ground of greater relative strength in bargaining. For though the organization of employees continued, the development of large establishments gave employers with accumulated capital the ability to withstand the demands[6] of their workmen. Conflicting interests gave rise to strikes and lockouts and periods of storm and stress usually followed the attempts of either side to gain any advantage. A typical illustration of the attitude of the two sides toward each other is shown by the action of Typographical Union No. 3 of Cincinnati in recommending to the Ohio legislature of 1883 the enactment of the following clause: "It shall be unlawful for any corporation, association, manufacturing establishment, or any person acting for them to demand or receive from laborers, or those who have been or may be in their employ any written instrument or document pledging or attempting to pledge such employees to withdraw from membership in any trade union or labor organization to which they may belong, or in any manner seek to prevent them from becoming members of such organization. All violations of the above to be punished by fine of not more than $500 nor less than $100."

However, during the period between 1880 and 1900 boards of arbitration were developed within the trade and regular scales of prices were established in many localities.[7]

In certain large newspaper establishments where the employer bargains as the representative of a consolidated industry in which groups of allied workers find employment, a tendency toward group autonomy has become apparent. This form of organization enables the various groups of workmen in the same plant to maintain the unions developed along trade autonomy lines while it admits of collective action on the part of allied groups when bargaining with a common employer.[8]

[7] See *Typographical Union, No. 16, Chicago, Constitution, By-laws, and Scale of Prices, adopted July 25, 1886;* and *International Typographical Union, Constitution and Scale of Prices, 1890,* Secs. 88, 89, 90. Compare the *Agreement between Chicago Typographical Union No. 16, and Allied Printing Trades, and the Inter-Ocean Publishing Company, signed March 22 1899;* given in appendix 9.

For an *Agreement between the American Newspaper Publishers' Association and the International Typographical Union* adopted in 1902, see appendix 10.

[8] See appendix 9 for a typical example.

The conference[9] held at Syracuse in 1898 between the committee of the United Typothetae[10] of America and the shorter workday committees of the International Typographical Union, the International Printing Pressmen's and Assistants' Union, and the International Brotherhood of Bookbinders, to consider the adoption of a shorter workday furnishes an example of an advanced stage of collective bargaining in the printing industry. The agreement[11] adopted at this conference shows how groups of allied workers may unite their strength in contracting

[9] See *Proceedings of the Conference between the United Typothetae of America, the International Typographical Union, the International Pressmen's and Assistants' Union, and the International Brotherhood of Bookbinders, Syracuse, 1898,* for an interesting discussion preceding the adoption of the agreement.

[10] The activities of the Typothetae in several localities are shown in the following documents; *Typothetae of Buffalo, Report of Secretary, 1895-96; Typothetae of Milwaukee, Organized 1886, Constitution and By-laws, Revised and Adopted Oct. 30, 1897;* and *Typothetae of the City of New York, Shop Rules and Practices for Offices, together with the Text of Agreements Bearing on the same. Revised to March 1, 1902.*

[11] Syracuse, N. Y., October 12, 1898.

This agreement, entered into between the Committee of the United Typothetae of America and the Shorter Workday Committees of the International Typographical Union, the International Printing Pressmen's and Assistants' Union and the International Brotherhood of Bookbinders, provides:

That the said United Typothetae of America agrees to inaugurate a shorter workday on the following basis: The nine-and-a-half-hour day, or the fifty-seven-hour week, to commence on November 21, 1898, and the nine-hour day, or fifty-four-hour week, on November 21, 1899.

That the said International Typographical Union, International Printing Pressmen's and Assistants' Union and International Brotherhood of Bookbinders will endeavor in the meantime to equalize the scale of wages in the competitive districts where at present there are serious inequalities, upon the basis outlined by the representatives of the Pressmen's and Typographical Unions at the Milwaukee convention of the United Typothetae of America.

Provided, That nothing in this agreement shall be construed or operate to increase the hours in any city where they are now less than those specified.

Provided, further, That nothing in this agreement shall be construed to prevent local unions or establishments from mutually arranging the fifty-seven or fifty-four hours, respectively, so that Saturdays may be observed as half holidays.

Provided, also, That wherever the employers of any city will not, prior to November 21, 1898, enter into an agreement with the local unions to carry out the above mentioned reduction of hours on the dates specified, the said union shall not be considered as restrained from endeavoring to obtain from such employers the nine-hour day or fifty-four-hour week on any such earlier date as they in their judgment may select.

Joseph J. Little, Amos Pettibone, Robert J. Morgan, A. J. Aikens, Edwin Freegard, on the behalf of United Typothetae of America;

James J. Murphy, C. E. Hawkes, R. B. Prendergast, David Hastings, G. H. Russell, on behalf of International Typographical Union;

James H. Bowman, Will G. Loomis, D. J. McDonald, James A. Archer, Theo. F.

with employers who bargain as the representatives of industries extending over wide competitive fields..

The International Printing Pressmen's and Assistants' Union,[12] the Lithographers' International Protective and Beneficial Association,[13] and the Stereotypers and Electrotypers[14] are really offshoots from the parent body of the International Typographical Union.[15] The Pressmen have a very efficient organi-

Galoskowsky, on behalf of International Printing Pressmen's and Assistants' Union;

Chas. F. Weimar, Wm. J. O'Grady, on behalf of International Brotherhood of Bookbinders;

George W. Harris, chairman Special Committee to Milwaukee Convention.

[12] For the general principles of the Pressmen see: *The American Pressman* for May and June, 1898, (published in Chicago); and from July, 1898, to Aug., 1899, (published in St. Louis). Also see: *Proceedings of the Fourteenth Annual Convention of the International Printing Pressmen's and Assistants' Union*, held at Baltimore, June, 1902. For local constitutions see the *Constitution and By-laws of New York Pressmen's Union No. 9; instituted Feb. 28, 1882; revised and adopted Jan. 9th, 1887;* and the *Constitution and By-laws of the Milwaukee Feeders', Helpers' and Job Pressmen's Union No. 27, subordinate to the International Printing Pressmen's Union of North America, organized March 17, 1896.*

[13] See: *Lithographers' International Protective and Insurance Association of the United States and Canada, Constitution of the General Association and the Subordinate Associations, adopted 1888;* and *Lithographers' International Protective and Beneficial Association of the United States and Canada, Constitution of the General Association, the Subordinate Associations and the General President's Decisions, July 23d, 1901*, New York, 1901.

[14] For the forms of organization among stereotypers and electrotypers see:

Stereotypers' and Electrotypers' Union No. 1, of New York and Vicinity (under the jurisdiction of the International Typographical Union of North America), organized Aug. 24th, 1885. Constitution and By-laws, 1885.

New York Stereotypers' Union, founded Sept. 8, 1863–Oct. 7, 1885; amalgamated Oct. 17, 1888. Constitution and By-laws Revised June, 1893.

Stereotypers' Union No. 4, International Typographical Union of Chicago. Constitution and By-laws Revised August, 1896, and Agreement made November 21, 1896.

[15] For a brief survey of the International Typographical Union compare the following documents:

Report of Proceedings of the Annual Session. Indianapolis, 1885-1902: *Reports of Officers of the Session.* Indianapolis, 1900–2; *Constitution, By-laws and General Laws of the International Typographical Union, and Union Printers' Home.* Indianapolis, 1902.

For recent history of the Typographical Union see *Typographical Journal*, Feb. 1897–June 1899.

For local constitutions and rules compare the following:

Indianapolis Typographical Union, No. 1. Constitution, By-laws and Scale of Prices adopted July 1, 1900.

New York Typographical Union, No. 6. Constitution and By-laws, revised and adopted Feb. 1894. Same, revised and amended to Aug. 6th, 1899, together with rules of order, etc. Same, revised and amended to Aug. 6, 1902.

Chicago Typographical Union, No. 16. Constitution and By-laws, adopted Dec. 31, 1899.

zation, and, in addition to the local agreements which prevail generally throughout the trade, they secure general agreements in connection with the Typographical Union and the Brotherhood of Bookbinders. The Lithographers sometimes form local agreements and the Stereotypers have had a system of joint agreements for several years. In 1901, for the sake of making the local agreement system more effective, the International Typographical Union and the American Newspaper Publishers' Association entered into a joint agreement and established a national system of arbitration.[16]

The success of the workmen in the printing industry in establishing strong systems of collective bargaining is undoubtedly largely due to the form of organization developed. Organized primarily along trade autonomy lines the various groups of workmen frequently unite for the purpose of making general agreements with common employers. By thus uniting the characteristic features of trade autonomy and of industry autonomy, the allied printing trades illustrate a form of group autonomy closely adjusted to the complex organization of modern industry.

Building Trades. In the building trades, elaborate systems of collective bargaining have been in operation in some of the trades for many years.

The early history of organization in these trades is somewhat obscure. However, there seems to be good evidence that house carpenters were organized as early as 1806, while the ship carpenters had been incorporated in New York in 1803. An advertisement in the Philadelphia Aurora for October 24, 1803, indicated an active demand for "mechanics, particularly carpenters, bricklayers, painters, and plasterers." But the fact that

Cream City Typographical Union, No. 23. Constitution and By-laws, adopted June 19th, 1881; revised Nov 5th, 1882. Milwaukee, 1883.

Columbia Typographical Union, Constitution, By-laws, and Scale of Prices in force Oct. 15, 1887. Wash. 1887.

Columbia Typographical Union, No. 101, Yearbook, Wash. 1902.

Madison, Wis.—Typographical Union, No. 313, Scale of Prices on Morning Newspapers, adopted Dec. 2, 1892.

[16] See appendix 10 for the Agreement adopted in 1902. Also compare the *Agreement between the Chicago Typothetae and Chicago Typographical Union, No. 16: Job and Book Scale of Prices.* Chicago, 1902.

the rough hewn houses of the time were frequently constructed by the owner left less room for specialization in the building trades than in other industries which had reached the stage of collective production.

However, with the increase in ship building, the ship carpenters began to look upon themselves as a distinct craft and it was in this branch of carpenter work that the beginnings of organization in the building trades were first nourished. From 1825 to 1830 there were numerous strikes by the ship carpenters along the Atlantic Coast for a ten-hour day. The strike of the Boston shipwrights and calkers in 1832, to reduce their hours from 14 to 10 was an important strike in the ten-hour movement; but its chief interest for our times lies in the spirit which was exhibited on the part of the employing merchants and the general public. One of the Boston daily papers commented on the situation as follows:—"Had this unlawful combination had for its object the enhancement of daily wages, it would have been left to its own care; but it now strikes the very nerve of industry and good morals, by dictating the hours of labor, abrogating the good old rule of our fathers, and pointing out the most direct course to poverty; for to be idle several of the most useful hours of the morning and evening will surely lead to intemperance and ruin. . . . The course which the persons alluded to are thus pursuing will tend to lose them the respect not only of the merchants, their direct employers, but of all members of the community, and finally of themselves." Meanwhile, representatives of 106 merchants and ship owners of Boston held a meeting in which they voted.—"to discountenance and check the unlawful combination formed to control the freedom of individuals as to the hours of labor, and to thwart and embarrass those by whom they are employed and liberally paid." The report of their meeting also sets forth "the pernicious and demoralizing tendency of these combinations, and the unreasonableness of the attempt, in particular, where mechanics are held in so high estimation, and their skill in labor is so liberally rewarded." Finally, this combination of employers decides, "We will neither employ any journeyman who at the time belongs to such combinations, nor will we give work to any

master mechanic who shall employ them while they continue thus pledged to each other and refuse to work the hours which it has been and is now customary for mechanics to work."[17] The combination of merchants was successful and the old hours of labor remained. This contest was only one of many similar ones in which the public and the courts could see no objection to employers combining to accomplish their ends, but condemned combinations of workmen as unlawful conspiracies.

In the decade from 1825 to 1835, the carpenters and masons also engaged in numerous strikes for a shorter workday. However, they were unsuccessful and the workday remained "from sun to sun." Nevertheless, their aggressiveness continued and the *National Intelligencer* of January 13, 1832, indicates that workmen in the building trades were "praying for the passage of a lien law."

The growth in local unions encouraged efforts toward national organization[18] among carenters in 1854 and again in 1867.

At the present time two strong organizations, the Amalgamated Society of Carpenters and Joiners[19] and the United Brotherhood of Carpenters and Joiners,[20] divide the allegiance of the craft, the former dating its origin from 1860, the latter from 1881. The carpenters and joiners have not been as successful in maintaining peace as have some of the other labor organizations in the building trades.[21] Their systems of bargaining are not as general as those found among the bricklayers and their joint agreements have too frequently been dictated by one side or the other rather than secured through mutual conference and mutual concessions on the part of employer and employee. Nevertheless, substantial gains toward better conditions in the trade have been made.

[17] Compare McNeill, George E. *The Labor Movement* . . . 80, 81, and 340.

[18] Circular statement issued by the Brotherhood of Carpenters and Joiners.

[19] *The Amalgamated Society of Carpenters and Joiners, Established June 4th, 1860; Amended Rules as Adopted . . . in October, 1892, to Come into Operation on March 1st, 1893, American Edition*, Manchester, 1893.

[20] *United Brotherhood of Carpenters and Joiners of America, Constitution, and Rules for Local Unions under its Jurisdiction. Established Aug. 12, 1881, Constitution as Amended . . . 1896; Adopted by Vote of Local Unions, . . . Went into effect Jan. 1, 1897*, Phila. 1897.

[21] See *United Brotherhood of Carpenters and Joiners, Report of Secretary, Annual Convention, 1898.*

Early methods for handling trade disputes are outlined in the constitution of the Brotherhood for 1882, article 11, which reads in part as follows: Section 1. "Whenever a dispute arises between an employer or employers and members of this Brotherhood, the members shall lay the matter before the local union which shall appoint an arbitration committee to adjust the difficulty. Then if said committee cannot settle the dispute the matter shall be referred to the union. If a two-third vote by secret ballot of the members present in such meeting shall decide that the members be sustained, then the corresponding secretary shall be ordered to transmit a detailed account of the grievance to the general secretary and shall forward the same to the executive board for their consideration." Section 2. "In case the executive board shall deem the grievance of sufficient character, the president shall send the district organizer to said city and cause a thorough investigation to be made. The district organizer shall transmit a detailed report of his finding to the executive board. If said board deem the grievance of sufficient cause . . . they can declare a strike, provided the local union has acted in conformity with Section 1, of this article." Section 3. "The executive board shall then have the power, if they deem advisable, to declare a strike. The General Secretary shall notify the local unions within five days whether the strike or lockout is sanctioned." Section 5. "In case the executive board fails to sanction any difficulty within five days, the local union can appeal to a general vote of all local unions. The general president shall submit the appeal to a vote to the local unions which shall be returnable within fifteen days after date of issuing circulars. . . . If the appeal is sustained the general president is to proceed as this constitution directs."

The application of these general principles of the Brotherhood to local conditions is illustrated in the local rules adopted at Cleveland in 1885; article 12, section 1 reads: "When grievances arise in shop or on work whether on account of wages or . . . time, or any other cause, the member or members must bring such grievances before the union in writing. If the grievance be deemed a just cause of complaint by the union, the President shall appoint an arbitration committee to settle if pos-

sible the matter referred to them and to report at the next stated meeting. The committee failing, the union shall take such course as they may deem necessary. . . . Section 2. It shall require a two-third vote of all members present to adopt measures to obtain a general advance of wages . . . the same vote to accept the least reduction and the secretary shall notify all members at least two weeks previous, when an increase or decrease is contemplated."

The local agreement in force in Chicago during 1890 between the Boss Carpenters and Builders' Association and the United Carpenters' Council,[22] illustrates a stage of collective bargain-

[22] To the Boss Carpenters and Builders' Association and the United Carpenters Council and Unions by them represented:

The arbitration committees appointed by your respective associations, with power to act, with the umpires selected, have agreed, in order to settle the pending carpenters' strike, and also to prevent strikes and lock-outs in the future, upon the following basis of settlement:

1. That the working day shall be eight hours.

2. That the pay shall be by the hour, and the minimum rate of wages shall be thirty-five cents an hour until the first day of August next, and from and after that date thirty-seven and one-half cents per hour.

3. That each of the above associations, the Boss Carpenters and Builders' Association and the United Carpenters' Council, shall, at its annual meeting in the month of January, elect a standing committee of arbitration consisting of five members, to serve for one year; but each of the present committees on arbitration shall continue in office until the election of its successors in January next. The president of each organization shall be ex-officio a member of said committee of five members. He shall be chairman of such committee, and in his absence the committee may delegate one of its members to act in his place; but the present arbitration committees may elect its own chairman, and the two committees an umpire to act in joint arbitration. Within one week after the election of such standing committee the president of the association shall certify to the other association the fact that such standing committee has been regularly elected, and the names of the members thereof. When notice of the election of the standing committee of arbitration shall have been received by the associations respectively, as soon thereafter as practicable, and in the same month of January, the two committees shall meet and proceed to organize into a joint committee of arbitration by the election of an umpire, who is neither a mechanic nor an employer of mechanics. The umpire, when present, shall preside at the meetings of the joint committee, and have the casting vote on all questions. Seven members, not including the umpire, shall constitute a quorum of the joint arbitration committee, and in case of the absence of any member the chairman of his committee shall cast the vote for such absent member. A majority vote shall decide all questions. The joint committee of arbitration shall hear all evidence of complaints and grievances of a member or members of one association against a member or members of the other; or of one association against the other, referred to it by the president of either association, and shall finally decide all questions so submitted, and certify such decision to the respective associations. Work shall go on continuously and all parties interested shall be governed by the award or decision rendered, provided, however, that work may be stopped by the joint order, in writing, of the president of the

ing in which the "regulations" of the employers and the "working rules" of the employees are modified by mutual concessions and are made the basis of settlement of differences which threatened peaceful relations.

respective associations, until the decision of the joint arbitration committee is obtained. The working year shall commence on the first of April of each year and end on the thirty-first day of the next March, and the joint arbitration committee shall have the exclusive power to determine and definitely fix, from year to year, all working rules. It shall have the exclusive authority to determine any and all other subjects in which both organizations are interested which may be brought before such joint arbitration committee by either association, or the president thereof. Working rules are all rules governing employers and workmen at work, such as the establishment of a minimum rate of wages to be paid practical journeymen carpenters per hour; a uniform pay day; the number of hours to be worked per day; the time of starting and quitting work; the remuneration for work done over-time and Sundays, and other questions of like nature. The number of apprentices being a matter of joint interest to both journeymen and employers, the joint committee on arbitration shall have power to decide, from time to time, the number of apprentices which employers shall take into service. This article shall be incorporated into the constitution of each association, the United Carpenters' Council and the Boss Carpenters and Builders' Association, with the provision that it shall not be repealed or amended by either association except upon six months previous notice given to the other association, and such notice, it is agreed, shall not be given until all honest efforts to settle the grievance or difficulty shall have been made.

4. FOREMEN—All working foremen shall be selected by the contractor and shall be his representative, but members of the Carpenters' Council or of any union connected therewith, acting as such working foreman, shall not be subject to the rules of the Carpenters' Council or of any such union while employed in that capacity, but he shall be entitled to all the benefits of his council or union as long as his assessments and dues are paid; provided, also, that a superintendent, inspector or overseer, who does perform the duties and labors of such working foreman, shall not be classed as a working foreman.

5. APPRENTICES—The members of the Boss Carpenters and Builder's Association to retain all apprentices now under service; each contractor to furnish the Carpenters' Council, within thirty days, a list of such apprentices, with a certificate that they were such on May 3, 1890, and until otherwise provided by the committee on arbitration, each contractor to take into service one apprentice each year, but all apprentices desiring so to do shall be permitted to join any association or union of journeymen carpenters. The term for apprentices to be three years, and no person to be taken as an apprentice who is over nineteen years of age; provided, however, that nothing in this article shall be construed as interfering with the right of the contractor or employer to teach his trade to his own sons, and they shall not be included in the number of apprentices above provided for.

6. NEW MEMBERS—That the Boss Carpenters and Builders' Association and the United Carpenters' Council and unions they represent shall, until the first day of June next, admit any person of good character to membership on the same terms as their present constitution and by-laws now provide.

7. JOURNEYMEN—The Carpenters' Council will furnish journeymen to any contractor or association of contractors who will sign a written agreement that the party applying for journeymen will in his work adopt the 8-hour workday, and pay at least the minimum rate of wages agreed upon between the Boss Carpenters and Builders' Association and the United Carpenters' Council, and

In the platform of the Carpenters' and Builders' Association of Chicago[28] in 1891 the employers set forth the following purposes of the organization: "We, the master carpenters and manufacturers of wood building materials, of Chicago, for the purpose of *uniformity of action* in regard to matters involving our mutual interests do hereby form ourselves into an association and adopt the following constitution and by-laws. . . .

.

"We affirm that absolute personal independence of the individual to work or not to work, to employ or not to employ, is a fundamental principle which should never be questioned or assailed; that upon it depends the security of our whole social fabric and business prosperity, and that employers and workmen should be equally interested in its defense and preservation. We recognize that there are many opportunities for good in associations of workmen, and while condemning and

will in all respects abide by and conform to the working rules adopted by said associations; also, that such party will abide by any agreement, decision or award made or to be made by the joint arbitration committees of said two associations; also, that in case of any difficulty or trouble arising in the prosecution of any work that cannot be settled by the working foreman and employer, such difficulty or trouble shall be referred to said joint arbitration committee, and all parties shall abide by its decision or award.

8. WORKING RULES—The following working rules, to be enforced until the joint committee on arbitration shall fix others, are adopted:

1. Eight hours shall constitute a day's work, beginning at 8 a. m. and ending at 5 p. m., but the noon hour may be curtailed by special agreement between the foreman (or contractor) and a majority of the workmen, but not in such a way as to permit more than eight hours work between the hours above named.

2. Overtime shall not commence before 6 p. m. and shall end not later than 7 a. m., provided, however, that in case of necessity, by agreement between a majority of the workmen and of the working foreman or contractor, work may continue from 5 p. m. without taking the supper hour from 5 to 6 p. m.

3. The minimum rate of wages for the present working year shall be, until the first day of August next, thirty-five cents per hour; from and after that date, thirty-seven and one-half cents per hour. Overtime shall be rated and paid for as time and one-half, and Sunday work as double time.

4. All journeymen carpenters shall receive their pay as often as once in two weeks, but when a journeyman is discharged he shall be paid at the time of his discharge.

J. W. Walker, Chairman, James Smith, Secretary, Eugene Brown, Paul Mathison, Chas. King, P. G. Lamoreaux, Arbitration Committee of the Boss Carpenters and Builders' Association.

R. H. Hassell, Chairman, W. S. Weeks, Secretary, James Morahan, James A. O'Connell, Alfred Williams, J. G. Ogden, Arbitration Committee of the United Carpenters' Council.

M. F. Tuley, George Driggs, S. P. McConnell, Umpires.

[28] Also compare *Carpenters and Builders' Association of Chicago, Official Directory, Constitution, By-Laws, etc.* Chicago, 1892–99.

opposing improper action upon their part, we will aid and assist them in all just and honorable purposes; that while upon fundamental principles it would be useless to confer or arbitrate, there are still many points upon which conferences and arbitrations are perfectly right and proper and that upon such points it is a manifest duty to take advantage of the opportunities afforded by associations to confer together to the end that strikes, lockouts and other disturbances may be prevented. . . .

"That the laws of the state shall prevail in regard to apprentices and not the dictates of labor organizations. . . .

"That stewards in control of the men employed at buildings will not be recognized and that foremen, as the agents of employers, shall not be under the control of the union while serving in that capacity."

The rapid organization of employers and employees alike in the larger building centers of the United States disturbed conditions of equilibrium in the trade and frequently subjected one side to the aggrandizement of the other. The disturbed conditions of the trade are reflected in the Report of the Secretary of the United Brotherhood of Carpenters and Joiners in 1894. In summarizing the history of their organization before the Congress on Industrial Conciliation and Arbitration held in Chicago in that year the Secretary[24] said: "Since the United Brotherhood of Carpenters was founded in 1881, for the past thirteen years we have had eight hundred and seventy-three carpenter's strikes, seven hundred and sixty-one of which were successful, fifty-four lost and fifty-eight compromised. . . . Since 1886, in eight years past, the local unions have expended in the Carpenters' Brotherhod from their local treasuries fully $120,000 in strikes and lockouts and then expended in our general office $210,583. This makes in all about $330,590 spent in strikes . . . dead loss you think? Well, since May 1st, 1886, we have been instrumental in establishing the eight-hour day for carpenters in fifty-four cities, and the nine-hour day in four hundred and twenty-six cities, and with that we have also in-

[24] McGuire, P. J., Secretary of the United Brotherhood of Carpenters and Joiners before the Congress on Industrial Conciliation and Arbitration held under the auspices of the Industrial Committee of the Civic Federation. Chicago, 1894.

creased wages before these dull times came in five hundred and sixty-eight cities, from 1886 to 1893 at an average increase of $.50 per day. With our membership for nine months' work in the year it amounts to $5,500,000 more wages only in those seven years Thus there is an actual amount of $3,750,00 more wages on an expenditure of $330,583 . . . a net return of seventy-eight per cent on the investment and along with that a bill for shorter hours, better treatment and more consideration." The Report of the Secretary for 1898 shows continued aggressiveness on the part of the Brotherhood,[25] the Report says: "Since 1883 to September, 1898, we have had one thousand and twenty-six strikes and lockouts of which nine hundred and ninety-eight were successful, sixty-one were lost, and sixty-seven were compromised. . . . The scattered threads of local and so-called independent unions, isolated and apart, provincial and narrow, have been woven into a majestic network of thorough organization, with strong financial resources and vast public influence . . . the chaotic and aggregated elements have been trained into a disciplined force."

On the other hand united action on the part of employing carpenters and contractors counterbalanced the activity of the employees, and the local agreements secured through collective negotiations during this period reflect tense conditions in many centers of the building industry.[26]

In Chicago negotiations between employers and workmen were interrupted by the great building trades strike in 1900. As the employers were largely successful the joint agreements adopted subsequently gave them many advantages.[27] However the Carpenters' Executive Council of the city is gradually securing concessions from the employers' associations and the old methods of negotiation bid fair to be restored upon a firmer basis.

[25] See *United Brotherhood of Carpenters and Joiners Report of Secretary at Convention, 1898.*

[26] See *Carpenters' and Builders' Association of Chicago, Constitution, By-laws, and Membership List, 1898;* and *Carpenters' Executive Council of Chicago, Working Rules, 1899.*

[27] See *Articles of Agreement between the Carpenters and Builders' Association, the Master Carpenters' Association and the Carpenters' Executive Council of Chicago and Cook County, in Effect from March 11, 1901 to April 1, 1903.* Given in appendix 3.

One of the characteristic features of collective bargaining in the carpentry trade at the present time is the rapid extension of the system of joint agreements to the smaller towns.[28] The members of the craft in the larger cities exert influence in unionizing the smaller places as they recognize the danger of a large supply of non-union men who may threaten their standard of wages in times of depression and strikes.

The bricklayers and masons[29] have developed effective systems of collective bargaining in most of the larger building centers. In the bricklaying trade in Boston the joint agreements date back to 1886, and peaceful relations between employers and employees have been maintained with scarcely a break during the entire time. In New York City the joint annual conferences have been in existence fully as long, but the system has not been as highly developed as in Boston.

Conditions in the trade in New York City during 1885 and 1886 are portrayed in the report of the President of the Bricklayers' and Masons' International Union as follows: "In reviewing the case . . . the bricklayers of New York have passed through a most remarkable evolution, and that too almost instantaneously. Disorganized, discouraged, bankrupt after the effects of their strike last summer with every possibility of a renewal of the struggle this year, with no concert of action, no stated regular price in work for wages, no regular hours of work, with men working ten, and ten and one-half hours a day and getting from $3.50, $3.60, $3.75, and $4 per day, things looked as if a general breakup would soon occur. . . . A committee was formed to arbitrate with the bosses and the result was wonderful. The bosses were as anxious for a settlement as were the bricklayers. They saw the danger of antagonizing labor too much and were anxious for peace. They formed an agreement and in that agreement they recognized the unions and they also recognized the hour question. The bosses were

[28] See *The Carpenter* from Jan. 1891 to Apr. 1902, for reports of organization and collective agreements in small towns.

[29] For their general principles see the *Constitution and Rules of Order of the Bricklayers and Masons' International Union of America, Organized Oct. 17, 1865. Revised and Adopted by the 36th Annual Convention, Pittsburg, Pa., Jan. 1902.* Also compare the *Annual Reports of the President and the Secretary.* North Adams, Mass., 1900–2.

almost on their knees and some of the thick-headed bricklayers could not see the advantage they had gained. The hour question being settled, the wages will regulate themselves. Even now some of the bosses are offering $.45 per hour. The bosses pledge themselves not to hire anyone outside of those unions and all "scabs" in their employ must join the Unions or "get out." The men that the unions lost last summer they will get back again and some of them will have to pay pretty well for it. In my opinion it is the biggest victory that has *ever* been won by labor in New York City. Our unions are recognized once more and their treasuries will begin to swell."[30]

The agreement established, provided for the reinstatement of journeymen and foremen upon payment of dues and assessments; the nine-hour day, with eight hours on Saturday; and $.42 per hour pay. It further provided for a joint arbitration committee between the Mason Builders' Association and the Bricklayers' Unions of New York. This committee was required to hold weekly meetings to hear grievances and to settle all disputes between employers and employees. Complaints could be made in person or in writing and it was requested that all grievances should be laid before the committee without delay in order to avoid all difficulties.[31]

In Chicago arbitration within the trade was introduced about 1887 and disputes were settled peaceably until the building trades strike of 1900. At that time, the bricklayers were the first to withdraw from the Building Trades' Council in order to make a separate agreement with their employers. The agreement[32] entered into after the strike, ended weeks of industrial

[30] *Bricklayers and Masons' International Union, Twentieth Annual Convention, St. Louis, 1886, President's Report,* 20.

[31] *Bricklayers' and Masons' International Union, Proceedings of the Twentieth Annual Convention, St. Louis, 1886.*

[32] Agreement and Working Rules Chicago Masons and Builders' Association.—This agreement, made this 27th day of June, 1900, by and between the Chicago Masons and Builders' Association, party of the first part, and the United Order of American Bricklayers and Stonemasons No. 21 of the Bricklayers and Masons' International Union, party of the second part, for the purpose of preventing strikes and lockouts and facilitating a peaceful adjustment of all grievances and disputes which may, from time to time, arise between the employer and mechanics in the mason trade. witnesseth:

That both parties to this agreement hereby covenant and agree that they will not tolerate nor recognize any right of any other association, union, council,

warfare. It illustrates the facility with which employers and employees are able to negotiate with each other when both sides are backed up by strong organizations.

or body of men not direct parties to this agreement to order a strike or lockout, or otherwise interfere or dictate, and that work can be stopped only by an order signed jointly by the presidents of the association and union, parties hereto, or the joint-arbitration board elected in accordance with this agreement; and that they will compel their members to comply with the arbitration agreement and working rules as jointly agreeded upon and adopted; and that where a member or members affiliated with either of the two parties to this agreement refuse to do so they shall be suspended from membership in the association or union to which they belong.

In conformity with the following principles adopted by the Building Contractors' Council under the date of April 24, 1900, both parties hereto this day hereby adopt said principles as an absolute basis for their joint working rules, and to govern the actions of the Joint Arbitration Board, as hereinafter provided for, to remain in full force and effect until April 1, 1903.

No Limitation of Work.—There shall be no limitation as to the amount of work a man shall perform during his working day. (Explanation.—This means that men employed in the different lines of work shall each do a fair and honest day's work.)

Use of Machinery.—There shall be no restriction of the use of machinery or tools. (Explanation. This means that all tools or machinery of whatsoever kind may be used in all trades or in the manufacture of any material entering into the construction of buildings.)

Unrestricted Use of Material.—There shall be no restriction of the use of any manufactured material, except prison-made. (Explanation.—This means that any material may be used, no matter where or by whom it is made, except prison-made.)

No Interference With Workmen.—No person shall have the right to interfere with the workmen during working hours. (Explanation.—This means that no person shall have the right to give orders to the men during working hours on the building except the employer or his representative.)

Apprentices.—The use of apprentices shall not be prohibited. (Explanation—This means that in each trade a fair agreement as to the number of apprentices shall be entered into, it being understood that apprentices shall not be subject to union rules, and shall at all times be under the control of the employer.)

Foreman.—The foreman shall be the agent of the employer. (Explanation.—This means that the foreman shall not be subject to union rules while acting as foreman, and that no fine shall be entered against him by any union, for any cause whatever, while acting in such capacity; it being understood that a foreman shall be a competent mechanic in his trade, and subject to the decisions of the Joint-Arbitration Board.)

Right to Work.—All workmen are at liberty to work for whomsoever they see fit. (Explanation.—This means that a man can work for any employer who will give him work in his trade, it being understood that he shall demand and receive the wages agreed upon by the Joint-Arbitration Board, in his trade, under all circumstances.)

Right to Employ.—Employers are at liberty to employ and discharge whomsoever they see fit. (Explanation.—This means that the employer shall have the right to employ union or non-union men, but all men shall receive the full wages agreed upon in their trade, and that any employer may employ or discharge any man he sees fit, without interference by any union.)

Arbitration Board.—Both parties hereto agree that they will at their annual election of each year elect an arbitration committee to serve for one year or

In other building centers, the bricklayers have followed the example set in the larger cities, and fair conditions of employ-

until their successors are elected and qualified. In case of death, expulsion, removal or disqualification of a member or members of the arbitration committee such vacancy shall be filled by the association or union at its next regular meeting.

Number of Members.—The arbitration committee for each of the two parties hereto shall consist of five members, and they shall meet not later than the fourth Thursday of January each year in joint session, when they shall organize a Joint-Arbitration Board by electing a president, secretary, treasurer and umpire.

Qualifications of Arbitration Board.—No member who is not actively engaged in the mason trade or occupies any other office in his association or union except the office of president, or holds a public office, either elective or appointive, under the municipal, county, state or national governments, shall be eligible to act as the representative in this trade Joint-Arbitration Board; and any member shall become disqualified to act as member of this trade Joint-Arbitration Board and cease to be a member thereof immediately upon his election or appointment to any other office in his association or union, or to any public office or employment.

Umpire.—An umpire shall be selected who is in no wise affiliated or identified with the building industry, and who is not an employee nor an employer of labor, nor an incumbent of a political elective office.

Power of Board.—The Joint-Aribtration Board shall have full power to enforce this agreement entered into between the parties hereto, and to make and enforce all working rules governing both parties. No strikes or lockouts shall be resorted to, pending the decision of the Joint-Arbitration Board.

Time of Meeting.—The Joint-Arbitration Board shall meet to transact routine business the first Wednesday in each month, but special meetings may be called on three days' notice by the president upon application of three members.

Rules for Procedure.—When a dispute or grievance arises between a journeyman and his employer (parties hereto), or an apprentice and his employer, the question at issue shall be submitted in writing to the presidents of the two organizatons, and upon their failure to agree and settle it, or if one party to the dispute is dissatisfied with their decision, it shall then be submitted to the Joint-Arbitration Board at their next regular meeting. They shall hear the evidence and decide in accordance therewith. All verdicts shall be decided by majority vote, by secret ballot, be rendered in writing, and be final and binding on both parties.

If the Joint-Arbitration Board is unable to agree, the umpire shall be requested to sit with them, and after he has heard the evidence, cast the deciding vote.

Power to Summon Members.—The Joint-Arbitration Board has the right to summon any member or members affiliated with either party hereto against whom complaint is lodged for breaking this joint-arbitration agreement or working rules, and also appear as witnesses. The summons shall be handed to the president of the association or union to which the member belongs, and he shall cause the member or members to be notified to appear before the Joint Board on date set. Failure to appear when notified, except (in the opinion of Board) valid excuse is given, shall subject a member to a fine of Twenty-five Dollars for the first default, Fifty Dollars for the second, and suspension for the third.

Salary.—The salary of a representative on the Joint-Arbitration Board shall be paid by the association or union he represents.

Stopping of Work.—No member or members affiliated with the second party

ment are quite generally maintained throughout the trade by means of collective bargaining.[33]

shall leave his work because non-union men in some other line of work or trade are employed on the building or job, because non-union men in any line or trade are employed on any other building or job, or stop or cause to be stopped any work under construction for any member or members affiliated with the first party, except upon written order signed by the presidents of the association and union (parties hereto) or the Joint-Arbitration Board under penalty of

Penalties.—a fine of not less than Twenty-five nor more than One Hundred Dollars. Any member or members affiliated with either of the two parties hereto violating any part of this agreement or the working rules established by the Joint-Arbitration Board shall be subject to a fine of from Ten to Two Hundred Dollars, which fine shall be collected by the president of the association or union to which the offending member or members belong, and by him paid to the treasurer of the Joint-Arbitration Board not later than thirty days after the date of the levying of the fine.

Collection of Penalties and Suspensions.—If the fine is not paid by the offender or offenders, it shall be paid out of the treasury of the association or union of which the offender or offenders were members at the time the fine was levied against him or them, and within sixty days from date of levying same, or in lieu thereof the association or union to which he or they belong shall suspend the offender or offenders and officially certify such suspension to the Joint-Arbitration Board within sixty days from the time of fining, and the Joint-Arbitration Board shall cause the suspension decree to be read by the presidents of both the association and union at their next regular meetings and then post said decree for sixty days in the meeting rooms of the association and union. No one who has been suspended from membership in the association or union for neglect or refusal to abide by the decision of the Joint-Arbitration Board can be again admitted to membership except by paying his fine or by unanimous consent of the Joint-Arbitration Board.

Division of Fines.—All fines assessed by the Joint-Arbitration Board and collected during the year shall be equally divided between the two parties hereto by the Joint-Arbitration Board at the last regular meeting in December.

Quorum.—Seven members present shall constitute a quorum in the Joint-Arbitration Board, but the chairman of each of the two arbitration committees shall have the right to cast the vote in the Joint-Arbitration Board for any absent member of his committee.

Steward.—The steward shall represent the journeymen. He shall be elected by and from among the men in his trade working on the same building, and shall, while acting as steward, be subject only to the rules and decisions of the Joint-Arbitration Board. No salary shall be paid to a journeyman for acting as steward. He shall not leave his work or interfere with workmen during working hours. He shall always, while at work, carry a copy of the working rules with him.

The presidents shall be allowed to visit jobs during working hours to interview the contractor, steward or men at work, but they shall in no way hinder the progress of the work.

Number of Apprentices.—Each employer shall have the right to teach his trade to apprentices, but no contractor or firm shall take more than one new apprentice each year, and they shall serve for a period of not less than three

[33] See *Bricklayers' and Mason' International Union, Proceedings of the 20th Annual Convention, St. Louis, 1886; Proceedings of the 21st Annual Convention, Washington, 1887;* and *The Bricklayer and Mason,* from March, 1898 to June, 1902.

In the minor building trades, local systems of collective bargaining are also common.

years as prescribed in the apprentice rules attached hereto, and be subject to the control of the Joint Board of Arbitration.

Working Hours.—Eight hours shall constitute a day's work, except on Saturdays during the months of June, July and August, when work may stop at twelve o'clock noon with four hour's pay for that day.

Night Work.—Eight hours shall constitute a night's work, which shall commence at 7 p. m. when two gangs are employed only, but where three gangs are employed one shift may follow the other immediately, and in that way work may be continuous.

Overtime.—Time and one-half to be paid for overtime. Work done between the hours of 5 p. m. and 8 a. m., and also Saturday afternoons during the months of June, July and August, shall be paid for as overtime, when only one shift of men are employed on the job.

No contractor shall work his men overtime except in case of actual necessity, the contractor to be the judge of the necessity, and for such overtime time and one-half shall be paid.

Double Time.—Double time to be paid for work on Sundays throughout the year and also work on the following four holidays (or days celebrated as such-; Decoration Day, Fourth of July, Thanksgiving Day and Christmas Day. Where

Shift-Work.—work is carried on with two or three shifts of men, working eight hours each, then only single time shall be paid for both night and day work during the week days and double time for Sundays and the above-mentioned holidays. No work shall be done on Labor Day.

Work done between the hours of 12 o'clock Saturday night to 12 o'clock Sunday night shall be considered as Sunday work and be paid for at the rate of double time. This applies also to the four holidays before mentioned.

Wages.—The minimum rate of wages to be paid bricklayers and stonemasons shall be fifty cents per hour, payable in lawful money of the United States.

Hereafter when more than the minimum rate of wages is paid, no employer shall make a reduction in the wages of a bricklayer or stonemason without giving said man or men due notice previous to making said reduction.

Pay Day.—It is hereby agreed that the journeymen shall be paid once every two weeks and not later than Tuesday, except when a contractor's work is widely scattering, when he will be allowed Wednesday to complete paying his men. When a journeyman is discharged, he shall be paid in full, and also when he is laid off, if he demands it, except when the lay-off is caused by bad weather or story-high. When a journeyman quits work of his own accord, he shall receive his pay on the next regular pay-day.

Time Checks.—Time checks, payable at the office of the employer, shall be considered valid, provided the journeyman be allowed a half hour's extra time for each mile he has to travel to get to the office. If he is not paid promptly upon his arrival at the office, and if he shall remain there during working hours until he is paid, he shall be paid the regular wages for such waiting time.

Branches of Work.—The following branches of work are covered by this agreement: Laying of rubble stone and bridge masonry; all kinds of brick work (except sewer work); setting of cut stone and terra cotta.

The stonemasons shall cut and trim all broken ashlar, range, rock-faced, and worm work, and all rough jambs and quoins in building work, and all rough, pitched face, bridge, viaduct and pier work, cut from limestone in the County of Cook, provided that there can be had a sufficient number of competent stonemasons to do said work; otherwise the contractor or contractors, after giving previous notice to the president of the U. O. of A. B. & S. M.

Effective organizations exist among the hod carriers in the larger cities.[34] The strict exclusion of non-union men enables

No. 21 of Illinois, of the B. & M. I. U., to furnish said men, has the right to employ stonecutters to finish said job.

The leveling off of all footing stone shall be done by stonemasons. No stone cut by convict labor will be set.

The line on brick work shall be put up but one course at a time, except in cases of obstructions or piers, and then only with consent of the masons doing the work.

Members of the U. O. of A. B. & S. M. No. 21, of Illinois, of the B. & M. I. U., holding a bricklayer's card will not lay stone, or those holding a stonemason's card will not lay brick, but the foreman may do both. The exceptions to this rule are in case of areas, or step or pier foundations that do not exceed one cord of stone, and, then only in case no stonemason is at hand, when a bricklayer may lay the stone in such areas, step or pier foundation. Plastering and pointing of stone walls shall be done by stonemasons, but may be done by bricklayers, if stonemasons are not on the job when the above work is ready to be done.

Members of the U. O. of A. B. & S. M. No. 21 of Illinois, of the B. & M. I. U., will not work on masonwork on any building for any contractors or firms where two or more members in the same firm work on the wall laying brick, rubble or dimension stone, or set cut stone or terra cotta.

No by-laws or rules conflicting with this arbitration agreement or working rules agreed upon shall be passed or enforced by either party hereto against any of its affiliated members.

It is earnestly recommended by the Joint-Arbitration Board that the fullest leniency be extended to members of both association and union for violations of rules during the lockout or strike.

It is agreed by the parties hereto that this agreement shall be in force between the parties hereto until April 1. 1903.

This agreement shall only become operative when the union withdraws permanently from the Building Trades Council and agrees not to become affiliated with any organization of a like character during the life of the agreement.

Apprentice Rules.—Apprentices shall be under the jurisdiction of the Joint-Arbitration Board, which has the authority to control them and protect their interests subject to approved indentures entered into with their employers and the rules adopted by the joint board.

The applicant for apprenticeship shall be under eighteen years of age.

The contractor taking an apprentice shall engage to keep him at work for nine (9) consecutive months in each year and see that during the remaining three (3) months of the year the apprentice attends school. The first two years the apprentice shall attend a public school during the months of January, February and March, and a certificate of attendance from the principal of any public school in Cook County will be accepted by the Joint-Arbitration Board as a compliance with this requirement. Three months of the last year he shall attend a technical school acceptable to the joint board, and a certificate that he has done so will be required before he is allowed to work during the coming year.

A contractor taking an apprentice shall keep him steadily at work, or failing to do so shall pay him the same as though he had worked for him. In case an

[34] Conditions in the trade in Chicago are shown in the *Agreement and Working Rules entered into between the Chicago Masons and Builders' Association, and the Hod Carriers' and Building Laborers' Unions, No. 1, 2, 3, and 4.* Chicago 1901.

the union to maintain discipline among the local workers. The unskilled nature of their trade which exposes hod carriers to the varying fluctuations of the labor market has led them to lay great stress upon the exclusion of non-union men, whereas the more highly skilled trades find such devices less necessary to their existence. A typical provision for the exclusion of non-union laborers is found in the constitution of the Chicago Hod Carrier for 1888. After stating that "the objects of the society are for the welfare of its members, and to place them in a position to withstand any attack of their oppressors who may hereafter attempt to reduce their wages, and also to obtain for its members fair remuneration for their daily toil,"[35] the rule[36] is laid down that "the steward . . . shall not allow any non-union laborer under any circumstances to work, under the penalty of $5 fine for the first offense."

The stone cutters usually affiliate with building trades councils in the larger cities but on account of the shifting nature of their work in many places they have found it expedient to adopt definite working rules which regulate the conditions under which members are permitted to work.[37] The working rules[38] of the Journeymen Stone Cutters' Association of Chicago in 1892 in-

apprentice at the end of his term for some cause is not a proficient workman, he may be required to serve another year if the Joint Board, after a thorough investigation so decides.

A contractor entitled to an apprentice may take one on trial for two weeks, provided the applicant holds a permit from the Joint Board, and if after trial the boy is unsatisfactory, he need not enter into indentures, but shall pay the boy Five Dollars per week for the two weeks. No boy will be allowed a trial with more than two contractors.

The minimum wages of an apprentice shall be not less than $260 for the first year, $300 for the second year, $350 for the third year, and $400 for the fourth year, payable semi-monthly.

The issuing of permits for an apprentice to work for another contractor when the one to whom he is indentured has no work shall be left for decision to the Joint-Arbitration Board.

All apprentices indentured to members of the C. M. & B. A. shall report to the Joint-Arbitration Board on the first Wednesday in January, April, July and October, to receive their new quarterly cards. Any apprentice not carrying the proper quarterly card will not be permitted to work.

[35] *Hod Carriers Protective Union and Benevolent Society of Chicago, incorporated 1873. Constitution, 1888*, art. 2.

[36] Idem, *By-laws*, art. 5.

[37] For conditions in the trade, see *Stone Cutters' Journal*, Mar., 1894–Jan., 1900.

[38] *Journeymen Stone Cutters' Association of Chicago, Constitution, 1892. By-laws*, art. 2. *Working Regulations.*

clude provisions that the association should not sanction piece work nor sub-contracting; that time lost by men in waiting for their wages after fourteen days should be paid at the current rate; that any man wishing to quit should get his pay after giving eight hours' notice; and that the association should not approve of a strike except when all other means had failed. A number of similar regulations which enter into various details of the employment relationship indicate that conditions of employment are often as definitely determined by a tacit recognition of working rules as under formal agreements.

Among the granite cutters of Maine and Massachusetts regular "bills of prices" are mutually agreed upon between employers and employees. In these "bills" conditions of employment are settled and some of the advantages of collective bargaining accrue to both parties to the agreement.[39]

Other building trades organizations which have developed effective methods of collective bargaining include the Mosaic and Encaustic Tile Layers' and Helpers' International Union;[40] the Brotherhood of Painters, Decorators and Paper Hangers of America;[41] the Operative Plasterers' International Association;[42] and the United Association of Journeymen Plumbers, Gas Fitters, Steam Fitters and Steam Fitters' Helpers.[43]

[39] See: *Granite Cutters' National Union, Constitution*, 1893, art. 31. Also compare Massachusetts, Bureau of Statistics of Labor, *Eleventh Annual Report*, 1880, 51.

See: *Granite Cutters' Journal* Sept. 1899—Feb. 1900, for conditions among granite cutters.

[40] See. *Mosaic and Encaustic Tile Layers of America. Organized 1883, Constitution and By-Laws Revised and adopted July 1889*, N. Y., 1889, and *Agreement and Working Rules Entered into between Chicago Mantel and Tile Dealers' Association, and the Mosaic and Encaustic Tile Layers' Union, Jan. 12, 1901, to Apr. 1, 1903.*

[41] Compare the rules of the *New York Paper Hangers' Association, Founded Feb. 1864. By-Laws, 1893*, and of the *Brotherhood of Painters and Decorators of America, Organized Mar. 15, 1887, Constitution and Rules for Local Unions under its jurisdiction, Revised, Aug, 1892.*

[42] *Agreement Entered into between the Employing Plasterers Association and the Operative Plasterers' Society of the City of New York. Commencing May 1st, 1892, and ending May 1st, 1896.*

[43] For organizations among the plumbers see: *National Association of Master Plumbers of the United States, Proceedings of the Annual Convention*, Baltimore, 1884-89: *Steam Fitters and Steam Fitters' Helpers Enterprise and Progress Associations, Rules and Regulations of the Enterprise and Progress Associations of Steam-Fitters and Steam-Fitters' Helpers, to Serve as a Guide in Shops*, N. Y., 1886; and *United Association Journeymen Plumbers, Gas Fit-*

The most characteristic development in the building trades has been the formation of building trades' and building contractors' councils. The building trades' council,—as the central body in which the labor organizations in the building trades in one locality are represented,—is able to secure joint action on the part of employees. The building contractors' council, on the other hand, unites the employers for common action. Wherever the building trades have been well organized, these central bodies have invariably arisen, and during the past decade collective agreements have been made between the employers' and employees' councils in our large cities. The most elaborate system of collective bargaining of this sort was that in operation in Chicago before the lockout of 1900. Since that time, the several trades have made agreements with their employers directly or with the employers' separate associations.[44] One of the conditions required by the Chicago Building Contractors' Council upon entering into agreements with individual unions after the strike of 1900 provided that the agreement should become operative only when the union withdrew permanently from the Building Trades' Council and agreed not to affiliate with any organization of like character during the life of the agreement. However, representatives of both employers and employees in the building trades in Chicago predict a reorganization of the central bodies for the purpose of securing concert of action in regulating local conditions in the trade.

The National Building Trades' Council[45] organized in 1897 aims to unite the local building trades' councils, the national building trades unions, and the local unions of building trades which have no national organization. Up to the present time

ters, Steam-Fitters and Steam-Fitters' Helpers of the U. S. and Canada Organized Oct. 11, 1889, Constitution and Rules of Order, Adopted . . . Oct. 11, 1889, . . . Revised, 1892.

[44] *Carpenters' and Builders' Association of Chicago, Constitution and By-laws,* 1898, p. 1.

Carpenters' Executive Council of Chicago and Vicinity, Working Rules, 1889, Articles I–XI.

Agreement and Working Rules between the Chicago Masons and Builders' Association and the United Order of American Bricklayers' and Stone Masons' Union, June 27, 1900 to Apr. 1, 1903, 3–15.

[45] *National Building Trades Council of America; its Origin, Objects and Benefits. How to Organize local Building Trades Councils.* St. Louis 1897.

collective bargaining in the building trades has not been materially affected by the National Council.

The close adjustment of labor organizations to the conditions in the industry is illustrated by the development of building trades' and building contractors' councils. With the concentration of the building industry into the hands of large contractors the separate unions in the different trades found it expedient to group their strength in bargaining with employers as to the general conditions of employment. Perhaps no other industry illustrates in such a variety of ways the complex forms of bargaining which result when employers and employees are grouped along both horizontal and vertical lines of organization.

Clothing and Textile Trades. In the clothing and textile trades the movement toward collective bargaining has varied largely according to the stage of development of the various industries.

Boot and shoe making was one of the first trades in this country to be transferred from the household to the factory and a corresponding development toward collective action is found in the history of the boot and shoe makers.

From 1796 to 1815 there were quite a number of strikes by the shoemakers and cordwainers of Philadelphia, New York, and Pittsburg. It appears that Philadelphia had an employers' association as early as 1789, when the master cordwainers of that city organized themselves into a society. Their constitution sets forth that the masters "shall consult together for the general good of the trade" and that "no person shall be elected a member of the society who offered for sale any boots or shoes in the public market of the city or who advertised the price of his work."[46] These euphonious phrases relate to activities of the masters which enabled them to act in unison both in raising the price of boots and shoes and in lowering wages. The organization of the journeymen followed in 1792. Four years later a successful strike was conducted for an increase of wages

[46] *Commonwealth v. Pullis et al.* 1806, (*Trial of the Boot and Shoe Makers of Philadelphia*, taken in shorthand by Loyd, Pamphlet, Philadelphia, 1906.) 29–134.

and in 1798 another strike for the same purpose was ordered with similar results.[47] Finally in 1799, the masters made a combined attempt to lower wages. The journeymen resisted with a general turnout which lasted about ten weeks, when concessions were made on both sides.[48] The journeymen numbered about 100 members at this time and negotiations between their society and the employers were carried on through committees representing their respective sides. In 1805 they ordered another "turnout" to increase wages.[49] After a seven weeks unsuccessful strike they were tried in the mayor's court and found "guilty of a combination to raise their wages." They were fined $8.00 each with costs and were to stand committed until the fine was paid.[50] The testimony taken at this trial showed that the Journeymen's Association prohibited their men from working in the same shop with those who were not members; that workmen had been beaten for working against the rules of the Association; and that the boycott had been developed by them in its modern form. The counsel for the prosecution brought testimony to show that a certain master cordwainer had lost as much as $4,000 annually in business because the journeymen's association would not allow their members to work in his shop along with non-union men. Evidence was also produced to show that the term "scab" had become such an epithet of approbrium that cordwainers dared not work contrary to the rules of the journeymen. The counsel for the defendants on the other hand produced evidence to show that the journeymen, numbering about 200, were being reduced to poverty through the collusion of the masters in agreeing not to pay more than a certain rate of wages, that the journeymen were compelled to act together to meet the oppression of the masters and that the rates they contended for were no more than was reasonable and just.[51]

In 1809, the Journeymen Cordwainer's Association of New York City converted a strike into a general "turn-out" because

[47] Ibid. 29, 134.
[48] Ibid. 14, 34, 47, 53, 134.
[49] See the *Address of the Working Shoemakers of the City of Philadelphia to the Public.* Printed in the *Aurora*, Nov. 28, 1805.
[50] Commonwealth vs. Pullis 24, 37, 41.
[51] Ibid. 29-134.

the proprietor first struck against, took his work to other shops. Nearly 200 men took part in this general strike. Their collective action is indicative of a high degree of organization for that time. The trial for conspiracy which followed this strike throws some interesting side lights on industrial relations. The defendants offered to show:—that long prior to the strike there existed a combination of the masters to lower wages; that the wages and rates contended for were reasonable and no higher than to afford them a bare subsistence; and that the masters made excessive profit on the labor of the workmen. A list[52] of wages agreed to in 1805 was submitted in evidence. This schedule seems to indicate that a definite understanding governed the relations between masters and journeymen. A copy of the constitution[53] of the Journeymen Cordwainers also produced at

[52] A list of wages for the Journeymen Cordwainers in the City of New York, agreed to on the first day of March, 1805. (Submitted as evidence in *People v. Melvin* 1810, 2 Wheeler's *Crim. Cases.* 262.)

Back Strap Boots, fair tops	$4 00
Back Strapping the top of do	0 75
Ornament Straps closed outside on do	0 25
Back Strap Bootees	3 50
Wax Legs closed outside, plain counters, fair tops	3 25
Cordovan Boots, fair tops	3 00
Cordovan Bootees,	2 50
Suwarrow Boots, closed outside	3 00
Do. inside closed, bespoke	3 75
Do. do. inferior work, do	2 50
Binding Boots	0 25
Stabbing do	0 25
Footing Old Boots	2 00
Foxing New Boots,	0 50
Foxing and Countering Old Boots	2 00
Do without Counters	1 75
Shoes, best work	1 12
Do. inferior work	1 00
Pumps, French edges	1 12
Do. Shouldered do	1 00
Golo Shoes	1 50
Stitching Rans	0 75
Cork Soles	0 50

[53] CONSTITUTION.—We, the Journeymen Cordwainers of the City of New York, impressed with a sense of our just rights, and to guard against the intrigues or artifices that may at any time be used by our employers to reduce our wages lower than what we deem an adequate reward for our labour, have unanimously agreed to the following articles as the Constitution of our Society.

Article I.—That this Society shall consist of a President, Secretary, and three Trustees, to be elected annually; and a committee of six members, to be chosen every six months.

Article II.—The election for President, Secretary and Trustees, shall take

the trial further indicates fairly complete organization among the workingmen. Although it does not appear that the journeymen engaged in any violence or disorder during the strike, in

place on the third Monday in January, annually, at the usual place of meeting, and they shall be respectively chosen by ballot, by a plurality of votes of the members present; and the Committee shall be chosen the third Monday in January, and the third Monday in July.

Article III.—The President, in order to preserve regularity and decorum, is authorized to fine any member six cents, that is not silent, when order is called for by him, and all members are to address the chair, one at a time.

Article IV.—Any person becoming a member of this Society, shall pay the sum of forty-three and a half cents on his admission, and six and a quarter cents as his monthly contribution; and should any member leave the city at any time, and stay for the space of three months or upwards, if on his return it can be proved that he has been so absent, he shall still be deemed a lawful member, by paying one month's contribution.

Article V.—All the money collected in this Society shall be delivered into hands of the Trustees, and they shall hold an equal share till it amounts to fifty dollars; they shall then deposit it in the United States Bank, and it shall not to be drawn on except in case of a stand out, and then left to a majority of the Society.

Article VI.—The Secretary shall keep a regular account of all the proceedings of this Society, and he for his services, shall receive one dollar per month, and twelve and a half cents for each notice served on any member.

Article VII.—The President, Secretary and Committee, shall meet on the second Monday in each month, to consult and propose any measures they may think beneficial for the Society, who shall assemble on the third Monday in each month, at the hour of seven o'clock from September to March inclusive, and at the hour of eight o'cock from March to September, and for non-attendance of President and Secretary, to pay a fine of fifty cents, and any member of the Committee to pay a fine of twenty-five cents.

Article VIII.—No member of this Society shall work for an employer, that has any Journeyman Cordwainer, or his apprentice in his employment, that do not belong to this Society, unless the Journeyman come and join the same; and should any member work on the seat with any person or persons that has not joined this Society, and do not report the same to the President, the first meeting night after it comes to his knowledge, shall pay a fine of one dollar.

Article IX.—If any employer should reduce his Journeyman's wages at any time, or should the said Journeyman find himself otherwise aggrieved, by reporting the same to the Committee at their next meeting, they shall lay the case before the Society, who shall determine on what measures to take to redress the same.

Article X.—The name of each member shall be regularly called over at every monthly meeting, and should any member be absent when his name has been called over three times successively, shall pay a fine of twelve and a half cents for the first night, twenty-five cents for the second, and fifty cents for the third; and if absent three successive meeting nights, the Secretary shall deliver him a notice, and if he does not make his appearance after being notified, on the following meeting night, (unless he can assign some just cause for staying away,) shall pay a fine of three dollars.

Article XI.—Any Journeyman Cordwainer, coming into this city, that does not come forward and join this Society in the space of one month, (as soon as it is known,) he shall be notified by the Secretary, and for such notification he shall pay twelve and a half cents; and if he does not come

accordance with the spirit of the times they were convicted of conspiracy and fined $1.00 each with cost.[54]

A striking illustration of the biased attitude toward labor organizations during the early part of the nineteenth century is shown in a decision rendered in the *nisi prius* court of Philadelphia in 1821. It seems that certain master shoemakers had combined and agreed with each other not to employ any journeymen who would not consent to work at reduced wages. An indictment for conspiracy was brought against the employers.[55] However, they escaped conviction although similar combinations of workmen almost invariably resulted in their conviction for criminal conspiracy.[56]

Finally after suffering convictions for conspiracy for nearly half a century the boot and shoe workers began to find the

forward and join the same on the second meeting of the Society, after receiving the notice, shall pay a fine of three dollars.

Article XII.—Any member of this Society having an apprentice or apprentices shall, when he or they become free, report the same to the President, on the first monthly meeting following; and if the said apprentice or apprentices do not come forward and join the Society in the space of one month from the time of the report, shall be notified by the Secretary, and if he does not come forward within two months after receiving the notification, shall pay a fine of three dollars.

Article XIII.—There shall be delivered to the President at every monthly meeting, a sufficient sum of money to defray the necessary expenses of this Society.

Article XIV.—If any member should be guilty of giving a brother member any abusive language in the society-room, during the hours of meeting, who might have been excluded from this Society by his misdemeanor, but by making concession have been reunited, he shall pay a fine of twenty-five cents.

Article XV.—Every member of the Society shall inform the Secretary of his place of residence, and should they at any time change their place of residence, they shall notify the same to the Secretary on the first monthly meeting following; not complying with this, shall pay a fine of twenty-five cents.

Article XVI.—Any member may propose as amendments to this constitution, new articles, or alterations of those in force, which proposed amendments must be delivered to the Committee in writing, who shall present the same to the Society, at their next monthly meeting, and if two-thirds of the members present concur therein, such amendment shall become a part of the constitution.

Article XVII.—It is the duty of the private members to attend the meetings and co-operate with its officers in promoting the welfare of the Society, for in doing this, they will recollect they are promoting their own individual welfare.

[54]*The People (of the State of New York) v. Melvin et al.*, 1810, Wheeler's, *Criminal Cases*, Vol. II., p. 262. Also compare the manuscript record of *People v. Melvin* in the *New York City Hall Record*, 1810. 207–16.

[55]*The Commonwealth ex rel. Chew, et al. v. Carlisle.* In Brightly's *Nisi Prius Reports*, 36.

[56]Compare: *Commonwealth v. Pullis et al.*, 1806, (*Trial of the Boot and*

attitude of the courts more lenient toward combinations among the journeymen. In the Trial of the Eight Journeymen Cordwainers[57] at Hudson, New York, held before the Court of General Sessions, June, 1836, the journeymen were acquitted of the charge of conspiracy, and in 1842 the supreme court of Massachusetts took the ground that combinations of workmen were conspiracies under the common law "only when the combining was for an unlawful purpose."[58]

As the boot and shoe workers were among the first to organize their trade for collective action, they were also among the first to develop methods of collective bargaining. As early as 1870 a joint board of arbitration was established between the shoemakers and the manufacturers in Lynn, Massachusetts. These joint boards were gradually introduced in many of the shoe manufacturing centers. By 1885 they had ceased to exist in most of the factories, but in the meanwhile the joint agent method of settling disputes had been developed. About this time some of the manufacturers also began to deal with their employees through shop committees. Since 1888 the employer and employees in one of the largest factories in Brockton have had a joint agreement to submit all disputes to the State Board of Arbitration and Conciliation.[59] At the present time the Boot and Shoe Workers' Union secures union stamp contracts from individual employers.[60] In addition to determining the conditions of employment these contracts also provide for arbitration within the trade.[61] Ocassionally in states where such boards

Shoe Makers of Philadelphia, taken in shorthand by Lloyd, Pamphlet, Philadelphia, 1806.)

People v. Melvin, 1809, (*Trial of Journeymen Cordwainers of the City of New York*), Yates, *Select Cases,* 112.

People v. Melvin, 1810, manuscript record, *New York City Hall Recorder* for 1810, 207-16.

Trial of the Journeymen Cordwainers of Pittsburg, had at . . . the Court of Quarter Sessions for the County of Allegheny . . . December, 1815.

[57] *The People of New York v. Cooper et al.*

For interesting comments on this case see the *Public Ledger* for July 2, 1836.

[58] *Commonwealth v. Hunt,* 1842, 45 *Mass.* 111.

[59] Carroll, T. A. *Conciliation and Arbitration in the Boot and Shoe Industry, Bulletin, Department of Labor,* January. 1897, No. 8, p. 5.

[60] See appendix 1 for *Boot and Shoe Workers' Union Stamp Contract.*

[61] For the organization of advisory boards and arbitration committees among the boot and shoe workers see the following: *Boot and Shoe Machine Men of Chicago*

exist, the contracts make provision for submitting disputes to the state board of arbitration.[62]

In a trial for conspiracy, following a strike by the journey-

Constitution, 1890, Art. 3, Sec. 13.. . . . The most important obligations and good intentions of this [arbitration] committee are, however, to adjust difficulties between employers and employees of our craft in this city, and, if possible to prevent strikes and lockouts in the future.

Boot and Shoe Workers International Union Constitution, Adopted at 4th Annual Convention, Held in Philadelphia Pa., June 6-9, 1892. Provision is made for *Shoe Councils* as follows:

Sec. 1. The general executive board shall cause to be provided local shoe councils in such localities as will best serve the interests of the International Union, . . . Two or more unions may constitute a council.

Sec. 3. It shall be the duty of the members of the council to keep themselves posted on all questions of interest to our trade; hear and decide all questions referred to them by the local unions under their jurisdiction, subject to appeal to the general executive board. . . . They shall use every available means to avoid strikes or stoppages of work which may be detrimental to the best interests of the members; preserve harmony between employer and employed; and be ready to labor for the advancement of organized labor.

Sec. 11. Shop councils shall cause to be appointed Shop committees. . . . If a grievance arises in a shop the shop committee shall use all means in their power to effect a settlement of same. In case a settlement cannot be effected they shall refer the case to the local executive board or local union. If a board or union cannot effect a settlement it shall be referred to the shoe council (where one exists). If no council exists it shall be referred to the general executive board. Shop committees shall perform such other duties as may be assigned them by the council.

Sec. 14. Local councils shall be subject to the general executive board. . . .

Lasters' Protective Union of America, General and Local Constitution, together with Rules of Order, and Rules Governing Local Advisory Boards, as Amended and Adopted at the Semi-annual Convention in Boston, Mass., April 25-30, 1892. Art. 9. Sec. 1. The general advisory board shall consist of one member of each branch of the organization and the general secretary and general treasurer and shall therefore at all times equal the number of branches of the organization plus two.

Sec. 4. But three members of the general advisory board shall act together at the same time and place except as hereinafter provided. . . .

Sec. 5. Any branch . . . before ordering a strike or taking any action that may be liable to cause a lockout shall notify the general secretary and request a meeting of the general advisory board.

Sec. 6. The decision of the general advisory board shall be binding.

Art. 29, Sec. 1. Any branch of the organization, when acting with the general advisory board, shall have power to submit the settlement of any strike, lockout, difference or dispute that may exist, to any board of arbitration which shall equally represent both parties to the controversy.

Sec. 2. Should the settlement of said strike, lockout, difference or dispute be submitted to said board of arbitration, the decision . . . shall be binding on all members of the organization affected thereby.

Art. 35. The general officers shall constitute a boycott committee.

Also see *Boot and Shoe Workers' Union Constitution, Revised . . . 1902*, for present regulations relative to advisory boards and arbitration committees.

[62]*The Union Boot and Shoe Worker*, Apr. 1900, and Feb. 1902.

men hatters of New York City, in 1823, it was charged that the defendants would not work for any master having in his service any workmen who had not agreed to "certain rules."[63] There is no evidence to show that the hatters had organized before 1819;[64] however, they reached an advanced stage of trade union tactics so soon after organization because certain members of the craft had brought over trade union traditions from England. From the time of their organization the hatters had a continued struggle for "recognization"[65] until about 1885. In that year, the Hat Makers' Association and the hat manufacturers of Danbury, Connecticut adopted an agreement which provided for the adjustment of all questions through committees. The agreement further provided for the arbitration of disputes within the trade and where the arbitration board representing the two parties could not come to a settlement they were to refer the matter to three disinterested parties whose decision was to be final.[66] Since that time wages and other conditions of employment have generally been settled through joint agreements in the trade.[67]

[63] *The People [of New York] v. Henry Trequier, James Clawsey and Lewis Chamberlain;* Wheeler, *Criminal Cases,* Vol. I, p. 142. The main charge in the indictment was their refusal to work with non-union men.

[64] McNeill, *The Labor Movement* . . . p. 71. Also see Weeks, Report on *Trade Societies,* bound with Vol. 20 of the *10th Census.* This report states that the *Silk and Fur Hat Finishers' National Association* was formed in 1843 and the *National Trade Association of Hat Finishers* in 1854. Contemporary constitutions of Hatters place the date of organization of the *United Journeymen Hat Makers' Association* of Danbury, Conn., at 1850 (Const. 1889); the *National Trade Association of Hat Finishers* at 1854 (Const. 1882); and the *Wool Hat Finishers' Association of the United States* at 1869 (Const. 1888).

[65] See *National Trade Association of Hat Finishers of the United States of America, Proceedings of the Special Convention,* Danbury, Conn., Apr. 24–29, 1882, 43-45; and *Report* . . . of May, 1885 3-4.

[66] See *Agreement* adopted Dec. 28, 1885, signed by sixteen manufacturing companies and agreed to by the *Hat Makers' Association.*

[67] For a typical illustration of the organization of arbitration committees among the hatters see the *United Journeymen Hat Makers' Association of Danbury, Conn., Constitution, 1889.* Art. 9. Sec. 1. Each shop is to regulate its own bills of prices and methods of work in accordance with this constitution and by-laws.

Sec. 2. Bills of prices are to be made for each season at stated times. . . .

Sec. 3. All disputes between employer and employees which cannot be settled by them are to be submitted to arbitrators, in the selection of whom each shall have an equal voice. The decision shall be final.

Sec. 4. The arbitration committee shall consist of three journeymen and three employers. In case they cannot agree each side shall choose one person not connected with the trade. They shall choose a third person and these shall decide the case.

The journeymen tailors brought over the "customs and rules" from England, and the tailors in this country were organized as early as 1806. A strike in Philadelphia in 1827, in which they demanded the reinstatement of five journeymen who had been discharged for demanding higher wages, showed that they were not far behind the shoemakers, printers, and hatters in developing concert of action for the purpose of protecting their interests in the trade. In the trial for conspiracy which followed this strike the evidence disclosed the fact that five tailors had individually asked for an increase in wages. This increase was temporarily granted but at the first opportune moment the men were discharged. Thereupon the remaining journeymen in the shop went on strike, with the result that they were found guilty of a conspiracy to compel their masters to re-employ the discharged men.[68]

The trial of the twenty-one Journeymen Tailors of New York City held in the court of oyer and terminer in 1836 is mainly interesting for the heavy fines which were imposed.[69] The tailors were indicted for striking for higher wages and preventing others by threats, and promises, and various modes from working except for the prices fixed by the union. The Court in his charge said: "Combinations were not necessary in this country for the protection of mechanics or any other class, they were of foreign origin and not in harmony with our institutions."[70] Accordingly he imposed fines ranging from $150 for the president to $100 each for the members of the union.

At the present time the majority of the skilled workmen in the tailoring trades belong to the Journeymen Tailors' Union.[71] This organization has a system of joint agreements in successful operation.

[68] *Commonwealth v. Moore et al.* 1827. (*Trial of Twenty-four Journeymen Tailors* before the Mayor's Court, Philadelphia, September Sessions, 1827) 6, 15, 164–7.

[69] *Commercial Advertiser*, June 11, 1836.

[70] *The People v. Faulkner et al., (Trial of Twenty-one Journeymen Tailors of the City of New York*, Court of Oyer and Terminer, 1836.)

[71] For their forms of organization see *Journeymen Tailors' Union of America, Constitution, Adopted by the 5th Convention . . . Aug. 12–17, 1889, and Approved by General Vote of the members, Nov. 1889; as Amended . . . Apr. 1, 1896.*

The United Garment Workers[72] include the less skilled workmen engaged in the making of clothing. The public agitation against sweat shops has recently enabled garment workers to use their union label with good effect in collective bargaining. Most of their agreements begin: "In consideration of the use of the union trade label of the party of the second part the party of the first part agrees to abide by the following rules and conditions governing the same. . . . " However, the difficulty of organizing the various nationalities employed in working on ready-made clothing and the irresponsible character of the small contractors,[73] many of whom are without property or reputation, have so far prevented any very effective changes in the conditions of employment.

In the textile trades the movement toward collective bargaining has also been modified by external influences. The introduction of foreign laborers and the large proportion of women and children in the textile factories have prevented a normal development of associated action on the part of employees. In a few branches, where more than ordinary skill is required, the operatives have built up strong organizations which have been able to secure joint agreements. However, for most of the different classes of textile workers, conditions of employment are fixed by employers rather than by joint conferences between employers and workmen.[74] The need of closer co-operation between employers and workmen is recognized by the National Federation of Textile Operatives of America in their constitution of 1900, in which they set forth one of their objects to be, "To persuade employers to agree to arbitrate all differences which may arise between them and their employees in order that the bonds of sympathy between them may be strengthened and that strikes may be rendered unnecessary."

[72] *United Garment Workers of America Constitution*, N. Y., 1891. Same, 1899. For rules of local organizations see *Gotham Association (Knife Garment Cutters) of New York City and Vicinity, By-laws*, N. Y. 1887, *and Bee-Hive Association of Ladies Underwear Cutters of New York and Vicinity, By-laws*, N. Y. 1892.

[73] See *United Brotherhood of Cloak Makers v. Gurewitz, N. Y. Law Journal* Aug. 1, 1900, and *United Brotherhood of Cloak Makers v. Frank, N. Y. Law Journal*, Nov. 8, 1900, for violation of collective agreements by employers.

[74] See *National Cotton Mule Spinners' Association of America* established Oct., 1858, *Constitution*, 1890. Art. 13, Secs. 3-4.

Metal Working and Machine Trades. In the metal working trades the iron workers were among the first to secure written agreements. Their conference committees date back to 1865, when an agreement[75] was made between a committee of boilers and a committee from the Iron Manufacturers, of Pittsburg. They fixed a scale of prices to be paid for boiling pig iron, based on the manufacturers' card of prices. They further agreed that either party should have the right to terminate the agreement by giving ninety days' notice to the other party and that there should be no deviation without such notice. During the year the workmen served the requisite notice and obtained two revisions of the scale in their favor. Finally the manufacturers served notice of a reduction of $2.00 per ton. This being rejected by the workmen, a general lockout ensued which lasted from December, 1866, to May, 1867, and was finally ended by the manufacturers paying the price demanded,—the one fixed in the original scale of 1865. This was rather an unfavorable beginning, but the workmen asked for another conference with the manufacturers. It was granted and a new scale of prices was agreed upon in July, 1867.[76] For a period of seven years this scale was maintained with only a few technical changes made by mutual consent. In 1875, there were some disagreements but after several short lockouts and after several new scales of prices had been adopted and in turn set aside, the manufacturers finally agreed to sign a scale for the following year. With slight modifications this scale was renewed from

[75] Memorandum of Agreement. Made this thirteenth day of February, 1865, between a *Committee of Boilers* and a *Committee from the Iron Manufacturers*, appointed to fix a scale of prices to be paid for boiling pig iron, based on the *Manufacturers' Card of Prices;* it being understood either party shall have the right and privilege to terminate this agreement by giving ninety days' notice to the other party, and that there shall be no deviation without such notice. . . .

[76] Memorandum of Agreement. Made this twenty-third day of July, 1867, between the *Committee of Boilers and Manufacturers*, to wit:—That $9 per ton shall be paid for boiling pig iron until Aug. 17, 1867. From that time until Sept. 15, eight dollars shall be paid. After latter date the following scale shall be operative:— . . . Being twenty-five cents per ton reduction or advance for each change of one-quarter of a cent per pound on card rates Either party to this arrangement can terminate the same by giving thirty days' notice to the other party. It is further understood that immediate steps shall be taken by both parties following said notice, to meet, and endeavor to arrange the difference, and settle the difficulty which occasioned said notice.

year to year without much difficulty until 1879, when the puddlers again went on strike to prevail upon the manufacturers to renew the scale of prices in force the previous year. After a short delay the manufacturers signed the proposed scale. In 1880, an advance was demanded by the boilers. It was conceded by the employers and the scale adopted in that year remained in operation for five years.[77]

The system of the sliding scale so long in successful operation in the iron and steel industry is described by the president[78] of the Amalgamated Association of Iron and Steel Workers a follows: "Under the sliding scale, a rate of wage is agreed upon for each position to be governed by the scale and then a selling price for the material is selected as being a fair minimum price, while that particular rate of wage is paid; a percentage of advance in the selling price of material is then listed as requiring a slight percentage of advance in the wages of the men in the several positions. The ratio of advance in wages is thus listed with the advance in material until the probable highest figure the material will sell at has been reached. A corresponding reduction in wage is agreed to as the material recedes in price. But a minimum price is agreed upon as representing a stopping point, in the decline in wages, and although the employer is free to sell his material lower than this minimum he is not permitted a reduction in wage below."

Various labor organizations[79] in the iron industry carried on negotiations with employers under the system of the sliding scale. Gradually the various groups have been united under the National Amalgamated Association of Iron, Steel, and Tin Workers of the United States. The extraordinary concentration in

[77] For an account of the early *Scales of Prices* adopted in the iron and steel industries at Pittsburg, see Pennsylvania, Bureau of Industrial Statistics, *Report*, 1880–1. 284–371.

[78] Garland, M. M., President of the Amalgamated Association of Iron and Steel Workers, address before the Congress on Industrial Conciliation and Arbitration, held under the auspices of the Industrial Committee of the National Civic Federation, Nov. 13 and 14, 1894.

[79] The United Sons of Vulcan organized in 1858 were the first trade union to secure a definite agreement with iron manufacturers in the United States. For a partial statement of this agreement see foot note 75.

For the general policy of the National Amalgamated Association of Iron and Steel Workers see their *Constitution and General Laws, adopted as amended by national convention . . . June, 1892.*

the iron and steel industry during recent years has left the workmen in a relatively weakened position for bargaining with employers.

From the time of its organization in 1859, the National Union of Iron Molders was zealous in obtaining "recognition" for the union. The early records indicate a long period of turbulence before the union finally reached its present period of peaceful negotiation for trade agreements. At the annual convention in 1867 the president[80] reported that the cost to the organization to support strikes and lockouts, for the six years ending January 11, 1866, amounted to $1,161,582.26, an average to the man per year of about $24. Commenting on this amount the president said, "Although this aggregate looks very large, yet when we divide it among the whole membership and consider that we have doubled our wages in six years and have secured a thousand other blessings, we cannot help but acknowledge that these things have been purchased at a very cheap rate." The Iron Moulders Journal for April 30, 1879, recounts less favorable phrases in the history of the union as follows: "little was accomplished until 1863 when the organization was rapidly extended until in every city, East and West, to be out of the union meant social ostracism and a molder without a card was a curiosity. The power acquired and assumed caused a sense of independence and security to prevail that rapidly destroyed even the acquired power. Strikes for almost impossible objects were of weekly occurrence, especially in the cities; taxation became very heavy and continuous, many of those taxed were not believers in strikes and gradually withdrew from the organization; the smaller unions suspended in the midst of strikes and in 1869 the debts of the organization were simply enormous. About this time the brakes were put on and strikes were discountenanced, the work of organization was commenced, the debt was paid off, and the prospects were . . . favorable until 1873

[80] Sylvis, Wm. H., President of the Iron Moulders International Union, *Annual Report, in Proceedings of the Eighth Annual Convention, Boston, 1867.*

A careful investigation which Professor John R. Commons has made into the records of the Iron Molders indicates that the expenditures for strikes and lockouts during the period did not reach the estimates given by the president of the International Union.

when another industrial panic followed. . . . Heavy reductions in wages drove off the weak . . . and this added to our late internal troubles has almost destroyed what was at one time the best organization of labor in America."

Accounts of the early conferences of the molders with employers are meager. However, the following statement from the *Iron Molders' Journal* of July, 1874, shows that the local union at Johnstown, ,Pennsylvania, had written agreements with employers before that date. The complaint is made that:—"The manager [of the Columbia Iron Works] first acknowledged the rights of workingmen to form unions and then claimed the right to refuse to hire them because they were union men. . . ." The statement continues:—"The men locked out prove, however, that the unions were recognized by Morrell [the manager] asking for committees therefrom to settle disputes and make agreements; that the unions have lived up to every agreement; and that the present lockout is occasioned by Morrell's desire to break a written agreement entered into with the unions."[81] In 1879, strikes by the Iron Molders of Cincinnati against a reduction and for an advance in wages were compromised and a written agreement, which fixed the price for six months, was adopted.[82]

Almost continuous strikes and lockouts prevailed in the iron foundry and especially in the stove foundry trades in the decade before 1891. Local agreements,—some of which dated as far back as 1873—had occasionally been obtained from employers by the Iron Molders' union,[83] but the principle of settling difficulties by means of business conferences was far from being established. The pressure of increased competition forced the manufacturer and the unions into frequent disputes. The ques-

[81] In an address before the National Conference on Industrial Conciliation and Arbitration, Chicago, 1900, President Fox of the Iron Molders' Union of North America stated that "as early as 1876 a referendum vote of the membership of the Iron Molders' Union had declared in favor of the arbitration of trade disputes, but had not been able to successfully put this policy in operation because there was no association of employers with whom to enter into such contract."

[82] Ohio, Bureau of Labor Statistics, *Third Annual Report*, 52, 53.

[83] *Iron Molders' International Union, Proceedings of the Eighth Annual Session*, Jan. 1867, 10.

Iron Molders' Journal, Sept. 10, 1874; Sept. 10, 1877; Apr. 30, 1879; June, 30, 1880.

tion of apprenticeship, the employment of "berkshires," the amount of percentage to be paid on the "board" price, the demands for a "gangway count" and "price book" remained fruitful causes for friction throughout the decade. The question as to who should be designated a molder continued an ever present source of controversy resulting in numerous strikes and lockouts, and it was not until 1891 that any effective progress toward securing peace in the trade was made. In that year, representatives of the Iron Molders' Union of North America[84] and of the Stove Founders' National Defense Association met in Chicago and adopted a joint agreement to settle disputes by conciliatory methods. This agreement further provided that neither party should discontinue operations pending investigation and adjudication. In the conferences between employers and employees since that time a system of collective bargaining has been developed under which wage scales are fixed for the entire country.[85] Strikes have been largely eliminated and mu-

[84] See *Iron Molders' Union of North America, Constitution and Rules of Order, Adopted at Detroit, Mich., July 19, 1890;* and *Constitution and Rules of Order, Adopted at Toronto, Ontario, July 24, 1902.*

[85] *Conference Agreements between the Iron Molders' Union of North America and the Stove Founders' National Defense Association.*

CONFERENCE, 1891. Whereas, there has heretofore existed a sentiment that the members of the Stove Founders' National Defense Association and the members of the Iron Molders' Union of North America were necessarily enemies and in consequence a mutual dislike and distrust of each other and of their respective organizations has arisen, provoking and stimulating strife and ill-will, resulting in severe pecuniary loss to both parties. Now, this conference is held for the purpose of cultivating a more intimate knowledge of each other and of their methods, aims and objects, believing that thereby friendly regard and respect may be engendered, and such agreements reached as will dispel all inimical sentiments, prevent further strife and promote the material and moral interests of all parties concerned.

CLAUSE 1, CONFERENCE 1891. *Resolved,* That this meeting adopt the principle of arbitration in the settlement of any dispute between the members of the I. M. U. of N. A. and the members of the S. F. N. D. A.

CLAUSE 2, CONFERENCE 1891. That a conference committee be formed, consisting of six members, three of whom shall be stove molders appointed by the Iron Molders' Union of North America and three persons appointed by the S. F. N. D. A., all to hold office from May 1 to April 30 of each year.

CLAUSE 3, CONFERENCE 1891. Whenever there is a dispute between a member of the S. F. N. D. A. and the molders in his employ (when a majority of the latter are members of the I. M. U.), and it can not be settled amicably between them, it shall be referred to the presidents of the two associations before named, who shall themselves, or by delegates, give it due consideration. If they can not decide it satisfactory to themselves, they may by mutual agreement summon the conference committee, to whom the dispute shall be referred, and whose

tual respect has been established through strong organizations on both sides.[86] Both employers and employees express great satisfaction with their system of collective contracts.[87]

decision, by a majority vote, shall be final and binding upon each party for the term of twelve months.

Pending adjudication by the presidents and conference committee, neither party to the dispute shall discontinue operations, but shall proceed with business in the ordinary manner. In case of a vacancy in the committee of conference, it shall be filled by the association originally nominating. No vote shall be taken except by a full committee or by an even number of each party.

CLAUSE 4, CONFERENCE 1892. Apprentices should be given every opportunity to learn all the details in the trade thoroughly and should be required to serve four years. Any apprentice leaving his employer before the termination of his apprenticeship should not be permitted to work in any foundry under the jurisdiction of the I. M. U. of N. A., but should be required to return to his employer. An apprentice should not be admitted to membership in the I. M. U. of N. A. until he has served his apprenticeship and is competent to command the average wages. Each apprentice in the last year of his apprenticeship should be given a floor between two journeyman molders, and they with the foreman should pay special attention to his mechanical education in all classes of work.

CLAUSE 5. CONFERENCE 1892. The general rate of molders' wages should be established for each year without change.

CLAUSE 6, CONFERENCE 1892. When the members of the Defense Association shall desire a general reduction in the rate of wages, or the Molders' Union an advance, they shall each give the other notice at least thirty days before the end of each year, which shall commence on the first day of April. If no such notice be given the rate of wages current during the year shall be the rate in force for the succeeding year.

CLAUSE 7, CONFERENCE 1892 amended 1893. Any existing inequality in present prices of work in any shop should be the basis for the determination of the price of new work of similar character and grade, unless the presidents of the two organizations, or their representatives, shall decide that the established prices of similar work in the shop are not in accord with the price of competitive goods made in the district.

CLAUSE 8, CONFERENCE 1893. Any existing inequality in present prices of molding in a foundry or between two or more foundries should be adjusted as soon as practicable upon the basis set forth in the foregoing paragraphs by mutual agreement, or by the decision of the adjustment committee provided by the conference of March, 1891.

CLAUSE 9, CONFERENCE 1896. Firms composing the membership of the S. F. N. D. A. should furnish in their respective foundries a book containing the piece prices for molding, the same to be placed in the hands of a responsible person.

CLAUSE 10, CONFERENCE 1896. New work should always be priced within a reasonable time, and under ordinary circumstances two weeks is considered a reasonable time, and such prices, when decided upon, should be paid from the date the work was put in the sand.

CLAUSE 11. CONFERENCE 1896, AMENDED 1903. The members of the S. F. N.

[86] For the financial strength of the *Iron Molders' Union of North America* see the *Quarterly Reports of President, Vice Presidents, Secretary, Treasurer, Journal Receipts and Financial Standing of Local Unions for Quarter Ending Sept. 30, 1902* Cincinnati 1902.

[87] Testimony of Thomas J. Hogan, Secretary, Stove Founders' National Defense Association, before the U. S. Industrial Commission, September 14, 1900. *Ind. Com. Report*, VII., 860–873.

The system of collective bargaining between the Iron Molders' Union and the Stove Founders' National Defense Association

D. A. shall furnish to their molders: Shoves, riddles, rammers, brushes, facing bags, bellows and strike-off, provided, however, that they charge at actual cost tools so furnished, and collect for the same, adopting some method of identification; and when a molder abandons the shop, or requires a new tool in place of one so furnished, he shall, upon the return of the old tools, be allowed the full price charged, without deducting for ordinary wear; and damage beyond ordinary wear to be deducted from amount to be refunded.

CLAUSE 12, CONFERENCE 1896, AMENDED 1903. When it is shown that the aggregate loss on account of dull iron amounts to 4 per cent of the total value of the work poured by the molders in any one heat, it shall be deemed a bad heat, and payment shall be made for all work lost from this cause; it being understood that when more than one cupola is used, the molders receiving iron from each cupola shall be considered the same as though they were working in separate shops, in making above computation.

If sufficient iron is not furnished the molder to pour off his work, and such work has to remain over, he shall be paid for such work remaining over at one-half the regular price.

These rules shall apply, excepting in case of breakdown of machinery, or other avoidabe accidents, where no allowance shall be made.

CLAUSE 13, CONFERENCE 1898. Whenever a difficulty arises between a member of the S. F. N. D. A. (whose foundry does not come under the provisions of clause 3, 1891 conference) and the molders employed by him, and said difficulty can not be amicably settled between the member and his employees, it shall be submitted for adjudication to the presidents of the two organizations or their representatives without prejudice to the employees presenting said grievance.

CLAUSE 14, CONFERENCE 1898. In pricing molding on new stoves, when there are no comparative stoves made in the shop, the prices shall be based upon competitive stoves made in the district, thorough comparson and proper consideration being given to the merits of the work according to labor involved.

AMENDMENT TO CLAUSE 9, CONFERENCE 1896: CLAUSE 15, CONFERENCE 1899. Stove manufacturers, members of the S. F. N. D. A., shall furnish in their respective foundries a book containing the piece prices for molding, the same to be placed in the care of the foreman of the foundry and a responsible molder agreeable to both employer and employees, said book to be placed in a locker on molding floor, to which the foreman and the molder so elected shall each carry a key.

CLAUSE 16, CONFERENCE 1902. The general trend of industrial development is towards employing skilled labor, as far as practicable, at skilled work, and in conformance with this tendency every effort should be made by the members of the S. F. N. D. A. and the I. M. U. of N. A. to enable the molder to give seven hours of service per day at molding, and to encourage the use of unskilled help to perform such work as sand cutting and work of like character, when the molder can be given a full day's work.

CLAUSE 17, CONFERENCE 1902. Inasmuch as it is conceded by the members of the S. F. N. D. A. that the earnings of a molder should exercise no influence upon the molding price of work, which is set according to well-established precedent and rule of conference agreements, by comparison with other work of a like kind, the placing of a limit upon the earnings of a molder in the seven hours of molding should be discountenanced in the shops of members of the S. F. N. D. A.

CLAUSE 18, CONFERENCE 1902. When a full floor of new work is given a molder he should be guaranteed the day-work rate of pay for the first day, in order that he may be given an opportunity to get the job in good running order

became the basis of a similar system[88] established in 1899 between the same union and the National Founders' Association.

The agreement[89] made in 1899 between the Iron Molders' Con-

for piecework; if, however, the molder should earn more than the day-work rate he should be paid his full earnings.

CLAUSE 19, CONFERENCE 1902. Where a change of job is made the molder often loses considerable time and is put to great inconvenience through the necessary clamps, boards and other facilities needed for the job not being supplied to him promptly. We believe that in well-regulated shops that should be made a feature of the shop management and should be a subject of favorable recommendation to the members of the S. F. N. D. A.

[88] *New York Agreement between National Founders' Association and Iron Molders' Union of North America, Conference 1899.*

Whereas, the past experience of the members of the National Founders' Association and the Iron Molders' Union of North America, justifies them in the opinion that any arrangement entered into that will conduce to the greater harmony of their relations as employers and employees, will be to their mutual advantage; therefore, be it

Resolved, That this committee of conference endorse the principle of arbitration in the settlement of trade disputes, and recommend the same for adoption by the members of the National Founders' Association and the Iron Molders' Union of North America, on the following lines:

That in the event of a dispute arising between members of the respective organizations, a reasonable effort shall be made by the parties directly at interest to effect a satisfactory adjustment of the difficulty; failing to do which, either party shall have the right to ask its reference to a committee of arbitration which shall consist of the presidents of the National Founders' Association and the Iron Molders' Union of North America, or their representatives and two other representatives from each association appointed by the respective presidents.

The finding of this committee of arbitration, by a majority vote, shall be considered final in so far as the future action of the respective organizations is concerned.

Pending adjudication by the committee on arbitration there shall be no cessation of work at the instance of either party to the dispute.

The committee of arbitration shall meet within two weeks after reference of the dispute to them.

[89] *Agreement between the Iron Moulders' Conference Board of New York and Vicinity and the Foundrymen of New York City.*

We the undersigned Foundrymen of New York city and vicinity, and the Iron Moulders' Conference Board of New York and vicinity, believing that this constant wrangle over wages and resulting in strikes and lockouts, is an element of disturbance to our mutual interests, do, for the purpose of avoiding the same, hereby agree:

First: That on and after June 1, 1899, the moulders in our employ will be paid a minimum wage, as follows: Floor moulders, $3; bench moulders, $2.75 per day, wages paid above this rate to be maintained, and that this rate shall continue in force until May 1, 1900, and thereafter, unless otherwise determined, as follows:

Second: That yearly conferences of the Foundrymen of New York City and vicinity, and said Iron Moulders' Conference Board, for the purpose of agreeing upon a wage scale for the ensuing year, shall be held; and that all such agreements, including that contained in the first clause of this agreement, shall be binding upon both parties until the 30th day of April next following, and unless thirty days previous thereto of any year notice of a desire to change the

ference Board and a majority of the foundrymen of New York City further illustrates the advantages of collective agreements to both parties to the labor contract.

The joint agreement system established between the International Association of Machinists and the National Metal Trades Association[90] in 1899 was short lived. Dispute arose as to the interpretation of the nine-hour clause and the strikes which followed resulted in the break-up of the national system in 1901. However, local agreements[91] were generally entered into between employers and the Machinists' Association after the settlement of the difficulties and probably the re-establishment of the national system is only a question of time.

wage rate be given by either party to this agreement, the wage rate then prevailing shall be the wage rate for the next following year.

Third: If no notice for a desire of change in the wage rate be given by either party thirty days previous to April 30th of any year, the holding of the yearly conference may be dispensed with, and the action of the previous conference shall continue operative for another year.

Fourth: That during the months of June, July and August, beginning with the first Saturday in June will be observed as a holiday for the entire day, and that each alternate Saturday, beginning with the second Saturday in June will be observed as a work day unless otherwise agreed upon.

Fifth: Any complaint made by the foremen of the different foundries as to the amount of work being performed by an individual moulder, shall be referred to a special committee of three fellow moulders in said shop for adjustment; and such adjustment if unsatisfactory, shall be appealed to the two associations parties to this agreement.

Sixth: That any foundry which runs overtime shall, except in case of accident or cause beyond control not consuming more than thirty minutes time, pay to its moulders time-and-a-half.

NEW YORK, *May* 23, 1899.

[90] For their forms of organization see *International Machinists' Union of America, Founded June 24, 1891; Constitution Adopted Sept. 26, 1891; International Association of Machinists, Constitution of the Grand Lodge and of Subordinate Lodges, Revised and Adopted at Toronto Ontario, June, 1901* and *National Metal Trades Association, Constitution, By-laws, Declaration of Principles, Resolutions*, Cincinnati, 1902.

[91] The following agreement entered into between Buckeye Lodge, No. 55, of Columbus, Ohio, and the metal manufacturers of that city, Jan. 21, 1901, is typical of local agreements between the International Association of Machinists and the Metal Trades Association.

First. The minimum rate of pay for machinists will be 25 cents per hour unless working by the piece, prices for which are to be mutually agreed upon between employer and employee. The rate for tool-makers and die-sinkers shall be 30 cents per hour. Machinists employed in tool rooms of machine shops are not to be considered tool-makers or die-sinkers.

Second. All overtime between 6 and 10 P. M. shall be paid for at time and one-quarter. All overtime from 10 P. M., also Sunday, Labor Day, July 4th, Thanksgiving and Christmas Day shall be paid for at time and one-half.

Third. In the employment of apprentices, one shall be allowed to the shop

Local systems of collective bargaining in the metal working and machine trades have also been secured by the International Brotherhood of Blacksmiths,[92] and by the Metal Polishers'' Buffers', Plasters', and Brass Workers'[93] International Union of North America.

Wood Working. In the wood-working trades, the Amalgamated Wood-workers' International Union has been especially successful in securing recognition and joint agreements since its

and one to every five machinists or fraction of five. The compensation for such apprentices shall be in accordance with the scale established for the International Association of Machinists, as follows:

$0.50 per day for the 1st year.
.75 per day for the 2d year.
1.00 per day for the 3d year.
1.25 per day for the 4th year.

It is agreed, however, in shops where the number of apprentices now employed exceeds the above ratio, no more shall be employed until the number shall have been reduced to the above limit. After an apprentice shall have served his four years' time in one shop, he shall be given his clearance papers by the employers with whom such time shall have been served.

Fourth. In employing machinists, no discrimination shall be made between union and non-union men.

Fifth. When necessary to reduce the force employed, it is agreed that when re-engaging men the preference be given to former efficient employees.

Sixth. In case of grievances arising, the employers agree to receive a committee of employees to investigate and endeavor to effect a settlement. One-half of said committee is to be selected by employers and the other half by employees. The latter may be members of the shop committee.

Seventh. It is expressly agreed that if any employee is found guilty of interfering or annoying in any way his fellow-workmen, such act shall make the offender subject to immediate discharge.

Eighth. Such employees as are capable of doing work not requiring the skill of machinists shall not be affected by this agreement.

Ninth. Employees shall be governed by the rules regulating and governing the management of individual shops in which they are employed.

Tenth. This agreement shall remain in force until January, 1, 1902, and unless notice is given by either party thirty days prior to that date, it shall remain in force for another year thereafter.

On behalf of Metal Trades Association. R. JEFFREY, President.
HAROLD G. SIMPSON, Secretary.

On behalf of International Association of Machinists.
H. L. WEDEMEYER, Secretary. WM. WEIR, President.

Witnesses: Hutchin, Kingsbury.

[92] For their general rules see *International Brotherhood of Blacksmiths, Constitution and By-laws, Revised and Adopted at Buffalo, N. Y., Sept. 2-6, 1901.*

[93] For an interesting development of boards for arbitration within the trade see:—*Constitution of the International Brotherhood of Brass Workers,* 1890, Art. 14, Sec. 1. "Whenever any grievance arises between members of this organization and their employers, the shop committee shall use every effect to arbitrate and settle the difficulty. If unable to effect a settlement the shop

organization in 1890.[94] This has been due in part to the concentration of business in large factories with the consequent combination of workmen, and also in a large measure to the very efficient officers at the head of the International Union.

The Amalgamated Woodworkers' Council of Chicago has for a number of years[95] entered into agreements with the Mill Men's Club of Cook county. These agreements in general provide for the employment of union men, the use of the union stamp, the adoption of a minimum wage scale, the exclusion of piece work, the regulation of apprenticeship, the recognition of union representatives, and the establishment of an arbitration committee to settle disputes.[96] Local agreements[97] exist in most of the

committee shall report to the president of the local brotherhood who shall . . . call a special meeting to take action on the same.

Sec. 2. The local brotherhood shall then appoint a committee of three . . . the president and two others, who shall immediately endeavor to arbitrate and effect a settlement.

Sec. 3. If the local brotherhood is unable to effect a settlement, it shall then be referred to the international executive board within forty-eight hours.

Sec. 4. The international executive board shall have full power to arbitrate and settle all difficulties and grievances that may arise.

Sec. 5. The international brotherhood guarantees its moral and pecuniary support to all its members in difficulties which may arise between them and their employers. . . .

Sec. 27. In places where more than one Local holds a charter, said Locals shall form a joint strike committee for the management of all strikes or lockouts."

Also see the *Constitution of Brass Molders' Union, No. 1 of Chicago, 1890, By-laws*, Art. 6, Sec. 1, which provides as follows: "In case of trouble of any kind in any shop no member or any number of members can declare that shop on strike without first bringing the trouble before the union and the union must sanction the strike by a two-thirds vote before any of the members will be allowed to quit work. Any member going on strike without first being authorized to do so by this union will be fined $10, and if not paid, will be expelled."

For present regulations in the trade see *Metal Polishers, Buffers, Platers, Brass Molders & Brass Workers International Union of North America, Due Book and Constitution*, N. Y., 1902.

[94] For an account of the first steps in the formation of the Machine Woodworkers' International Union of America see the *Machine Woodworker*, Dec. 1890, and Sept., 1891. For a statement of their principles see the *Constitution, adopted at St. Louis, Aug., 1890; revised at Chicago, Dec. 27th to 31st, 1892.*

[95] *See Cyclopedia of Information for Woodworkers* for the agreement entered into Oct. 4, 1897.

[96] For a typical agreement between the *Amalgamated Woodworkers Council of Chicago* and the employers see appendix 11.

[97] The following form has been commonly used by local unions of woodworkers in bargaining with employers.

Amalgamated Wood-workers International Union,

Articles of Agreement.

Agreement entered into on this, the —— day of ——, 18—, between ——

large cities and in the smaller towns which are wood-working centers.

The woodworkers' union has been involved in a large number of demarcation disputes. On the one hand they have met the opposition of the Brotherhood of Carpenters and Joiners which claims jurisdiction over work covered by the woodworkers and on the other hand they have had controversies with the United Order of Box Makers and Sawyers because this union covers work over which the woodworkers claim jurisdiction. With the rapid development of various lines in the woodworking industries it has been inevitable that factional differences should dis-

——, manufacturer of ——, part— of the first part, and the undersigned representatives of Amalgamated Wood-Workers' Union, No. —— of ——, parties of the second part.

Article 1. The part— of the first part hereby agree— to hire none but members in good standing of the Amalgamated Woodworkers' International Union, who carry the card issued by the above branch of said organization, or who shall signify their intention, or make application for membership in said union.

Article 2. The representative of the Amalgamated Woodworkers' Union No. —— shall have access to the factory of the part— of the first part at any reasonable time.

Article 3. The minimum scale of wages for cabinet makers and bench hands shall be $—— for —— hours; for machine hands, $—— for —— hours, and for finishers, $—— for —— hours, and it shall be understood that all employes who receive more than the foregoing scale shall not be subject to any reduction in said wages by reason of the adoption of this minimum scale.

Article 4. In consideration of the above the parties of the second part hereby agree that the part— of the first part shall be furnished, and have the right to use the union label issued by the Amalgamated Woodworkers' International Union.

Article 5. Party of the first part may have one apprentice to every ten bench men, or fraction thereof, and one apprentice to every five machine men, or fraction thereof. Each apprentice shall serve a term of three years at the following rate of wages: "First year, —— per day; second year —— per day, and the third year —— per day. No one shall be accepted as an apprentice who is over twenty years of age. Apprentices over sixteen years of age shall be obliged to carry the apprenticeship card of the Amalgamated Woodworkers' Union, No. —— of ——.

Article 6. In the event of any dispute arising between the parties to this agreement, then the part— of the first part, along with a representative or representatives of the Amalgamated Woodworkers' Union, shall endeavor to arrive at a settlement that will be satisfactory. In case no settlement is arrived at then the part— of the first part shall appoint one member, the parties of the second part another member, and the two parties so selected shall appoint a third member of an arbitration committee whose decision in the matter shall be final.

Article . This agreement shall be in force from the date of the signing hereof until ——.

For the part— of the first part. *For the parties of the second part.*

..... (Seal) (Seal)

..... (Seal) (Seal)

Strike out objectionable matter, and insert special articles not provided for above.

turb the separate groups of workmen organized into separate unions. Such differences are quite common in the early stages of development of labor organizations. With more complete organization petty differences due to demarcation disputes are usually eliminated through the disinterested efforts of labor leaders in neutral unions, who act as arbitrators between contending organizations. Gradually adjustments in accord with the nature of the different employments are worked out and the dividing lines between trades become definitely established.[98]

The Coopers' International Union,[99] and the United Order of Box Makers and Sawyers have also developed the joint agreement system within recent years.

Glass and Pottery Trades. In the glass and pottery trades[1] wage scales and other conditions of employment have been agreed upon in annual conference for quite a number of years. In 1885, the Flint Glass Manufacturers' Association, composed of 17 firms, created a general lockout by closing their works against all union men. In 1893, the United States Glass Company inaugurated a lockout against union men which lasted for three and one-half years. Similar fights were carried on at various times. Nevertheless, the union continued to grow and at the present time it controls 85 per cent of the workmen, or practically all of the skilled labor in the flint glass trade. When the National Glass Company was incorporated in 1899, it permitted all of its nineteen separate works to be unionized rather than face a strike of union men who objected to working in the same establishment with unorganized labor.[2] The glass trade furnishes a striking example of concentration in industry followed by cor-

[98] Compare the action of the *Chicago Federation of Labor,* in June, 1902, in establishing a commission composed of one delegate from each affiliated union, to adjust demarcation disputes among contending unions.

[99] The *Coopers' International Union, Constitution, 1892;* Art. 4, Sec. 1, provides that "all difficulties arising between employers and employees shall be referred to the local Executive Board who shall constitute a Board of Arbitration who alone shall have power to order strikes." The agreements made by the Coopers generally provide for arbitration of disputes not covered in the written contract.

[1] For conditions in the pottery trades see the *Wage scale adopted by the Sanitary Manufacturing Potters' Association and National Brotherhood of Operative Potters, to take effect July 7, 1902.* Trenton, N. J. 1902.

[2] Testimony of Addison Thompson, Secretary of the National Glass Company before the Industrial Commission, September 12, 1900, *U. S. Ind. Com. Report,* Vol. 7, 828–41.

Also see testimony of James Campbell, Ex-President Glass Workers of America given March 9, 1899; 43–54.

responding combinations of labor which insisted upon the right of organized collective action in order to maintain the position they had enjoyed under individual production.[3]

[3] For typical scales adopted by the American Flint Glass Workers Union and the Associated Glass Manufacturers see the following: *Wage and move list of the paste mould department adopted by the Associated Manufacturers & A. F. G. W. U. in joint committee meeting, Revised by conference, August, 1899; Price list of the prescription branch revised at a representative conference meeting between the Western Flint Bottle Association and the A. F. G. W. U. 1900–1901; Revised wage and move list of the Chimney branch, A. F. G. W. U., made at Muncie, Ind., 1899, and revised by the conference of manufacturers and workers in 1900; to continue in effect until June 30, 1902; Price list adopted by the Glass Bottle Blowers' Association of the United States and Canada, and the Flint Prescription Manufacturers' Association, applying to covered pots only. Blast of 1902–1903.* Camden, N. J. 1902.

The following form of agreement, used by the glass workers in Illinois, illustrates the main features of collective contracts in the glass working industry.

Glass Workers.

Agreement entered into this day of, 190.., between, manufacturers of..... parties of the first part, and the undersigned representatives of Local No. 1 of Chicago, Amalgamated Glass Workers International Association of America, party of the second part.

Article 1. The party of the first part hereby agree to employ none but members of the Amalgamated Glass Workers International Association who carry the current quarterly working card of said association or those who are willing to become members of said association and are competent workmen and eligible to membership in said union.

Article 2. Should it appear that the party of the first part employs any person or persons who are not eligible to membership in the Amalgamated Glass Workers International Association then such employes shall be or become members of the organization to which they may be'ong.

Article 3. The following minimum scale of wages shall prevail:

	Per hour.		Per hour.
Roughers	$0 30	Lead glaziers	$0 28
Smoothers	30	Prism glaziers	25
Emeryers	30	Glass setters (inside)	25
White wheelers	27	Glass packers	22½
Roughers	27	Cementers	19½
Scratch markers	31	Pattern cutters (stain glass)	
Scratch polishers	25	girls only	21
Scratch polishers machine		Kiln tenders	
hands	23	Emergency men	30
Silverers		Tracers (sand blast)	25
Silverers helpers	22½	Stencil makers	28
Wheel cutters		Gilders	23
Bevelers on lead work	25	Stencil foil cutters	17
Designers (stain glass)	30	Free hand foil	28
Designers (sand blast)	36	Finishers	17
Figure painter (class B)	41	Chippers	26
Draughtsmen	35	Washers	22½
Glass painters cartooners	59	Enamelers	25
Drapery painter (class C)	35	Machine men	25
Canopy emblem painters(class D)	28	Glass sign builders	
Glass cutters	31	Transferers	22½
Cutter, assistant mirror	25	Glass sign builders	
Metal sash glaziers	31	Helpers	17

And it shall be understood that any or all employes who are receiving more

Mining. In coal mining the beginning of conference committees can be traced back to 1869 in the anthracite regions. In that year the employers' association in the Schuylkill district

than this minimum scale shall suffer no reduction by reason of the adoption of this agreement; it shall be further understood that any branch of this Amalgamated Glass Workers International Association which has no minimum wage scale herein specified, shall receive such scale as the party of the first part and the party employed may agree upon.

Article 4. Section 1. Nine hours shall constitute a days work for all branches of the trade involved in this agreement, except designers, cartooners, draughtsmen and glass painters, for whom eight and one-half hours shall be a day's work.

Section 2. It is agreed that all employés shall end their day's work one hour earlier on Saturday.

Section 3. Beginning with the first Saturday in May and ending with the first Saturday in September all employés shall have Saturday afternoon off, no time over nine hours in any one day shall be worked during the week to make up for time lost on Saturday, unless such time is paid for at the rate of time and one-half.

Article 5. Time and one-half shall be paid for all overtime, and double time shall be paid after 10:00 o'clock p. m., also for Sundays and the following legal holidays: New Years Decoration, Fourth of July, Thanksgiving and Christmas days, and under no circumstances will a member of the organization be allowed to work on Labor day, and it shall be understood that over-time shall begin at the end of any regular day's work and shall be considered overtime until the beginning of any regular day's work.

Article 6. The party of the first part, and the party of the second part, hereby agree that all apprentices now employed shall remain as apprentices in the shop in which they are employed, and their time of apprenticeship shall be three years, from the time they commence to work at the trade, at the following minimum scale of wages: First three months in the first year, on probation; second three months, ten (10) cents per hour; the next six months, twelve (12) cents per hour; first six months in the second year, fifteen (15) cents per hour; next six months, eighteen (18) cents per hour; first six months in the third year, twenty-one (21) cents per hour; next six months twenty-five (25) cents per hour, and after the expiration of the three years they shall recieve the regular minimum scale of wages as specified in article three of this agreement.

Article 7. (This article is to be applied to all apprentices who may commence to learn the trade after the adoption of this agreement.) The party of the first part, may have one apprentice to every ten (10) journeymen regularly employed or a majority fraction thereof and one apprentice to every additional ten (10) journeymen regularly employed or majority fraction thereof, each apprentice shall serve a term of four (4) years in one shop at the following minimum scale of wages: First three months of the first year, on probation; second three months, ten (10) cents per hour; the next six months twelve (12) cents per hour; the first six months in the second year, fifteen (15) cents per hour; next six month[s], eighteen (18) cents per hour; the next six months in the third year, twenty-one (21) cents per hour; the next six months, twenty-five (25) cents per hour; the first six months in the fourth year, twenty-seven and one-half (27½) cents per hour; the next six months thirty (30) cents per hour and after the expiration of his apprenticeship he is to receive the regular scale of wages as provided for in article three of this agreement. No one shall be accepted as an apprentice under sixteen (16) years of age or over twenty (20) years of age. All apprentices shall carry the current quarterly

reached an agreement with their employees and adopted a scale of prices.[4] The operators became dissatisfied with the scale and the following year proposed a reduction in wages. The miners,

apprentice working card of the Amalgamated association, and it is understood that all apprentices learning to cut stained glass shall also learn how to make patterns.

Article 8. The parents or guardians (if any) of all apprentices shall be informed of the condition of this agreement, pertaining to their case, and if they have no objections then such applicant for apprenticeship may be employed as specified in this agreement.

Article 9. Should any employer cease to do business and thereby throw an apprentice out of employment, then such apprentice may work for any employer, who may desire his service until there is an opportunity of placing said apprentices in regular apprenticeship. Should any apprentice leave his place of employment before the expiration of his term of apprenticeship, then the pa[r]ty of the second part hereby agrees not to permit such apprentice to work in any shop under their jurisdiction.

Article 10. It is hereby agreed by the party of the first part, that the authorized representative of the party of the second part shall have access to that part of the shop or factory where members of the party of the second part are employed, at any reasonable time, after such representative has applied at the office or to the person in charge of the shop or factory, such representative shall make a brief statement of the object of his call; he shall make no unnecessary delay in attending to the matter for which he has called for.

Article 11. It is further agreed that a strike to uphold the articles herein set forth or to uphold union principles shall not be considered a violation of this agreement.

Article 12. There shall be apppointed from among the regular employees of each shop or factory a steward who shall hear complaints and grievances of all kinds and if he finds them well-founded he shall endeavor to adjust the same with the employer or his representative, or he may refer the same to the union or to their authorized representative.

Article 13. All goods manufactured by the party of the first part shall bear the label or trade mark of the Amalgamated Glass Workers International Association, which label or trade mark will be furnished free of charge to all employees who have signed this agreement.

Article 14. The party of the second part hereby agrees to continue to do all in their power and to save no expenses to bring about conditions throughout the country comparatively similar to the articles herein set forth.

Article 15. It is agreed that between the 1st and 15th of April, of each succeeding year, the party of the first part and the party of the second part will meet for the purpose of discussing the conditions of the trade and for the purpose of the renewal of this agreement or of making any desired change in the same.

Article 16. In all cases where an employer works at any of the branches of the trade herein mentioned, then such employer or employers agree to work only during such time as at least a majority of his or their employees

[4] During the strike in the summer of 1869 the Executive Committee of the Coal Association of the Schuylkill region submitted a scale to the men. At a meeting of the General Council of the Workingmen's Benevolent Association the proposition of the operators was considered and it was resolved,—"That . . . all districts or branches that can agree with their employers as to basis and condition of resumption, do resume work."

thereupon went on strike but before the end of 1870 a compromise scale was adopted.[5] In 1871, there was trouble again over

are also working and any infringement on this article by any employer shall be considered a violation of this agreement.

Article 17. The party of the first part hereby agrees not to deliver any material to any employer on whom a strike has been called, after forty-eight (48) hours notice has been given in writing by the party of the second part.

Article 18. In the event of any dispute between the parties of this agreement, the party of the first part and the representative of the party of the second part, shall endeavor to arrive at a satisfactory settlement and in case no settlement can be arrived at then the party of the first part, and the party of the second part, shall each appoint a practical man, and those two shall appoint a third within forty-eight (48) hours after any dispute has arisen, the three to act as a Board of Arbitration, whose decision shall be binding on both parties of this agreement. During this time no strike or lockout shall be declared by either party. The decision of the arbitration committee shall take effect from the time said committee went into session; the expenses of this board to be borne by both parties.

Article 19. Should this agreement be signed by an authorized representative of an employers' association th[e]n a list of the names of all employers so [a]ffected shall accompany this agreement.

Article 20. This agreement shall take effect on the.....day of..... 190...., and shall continue in effect until the..... day of.....190....

For party of the first part.	For party of the second part.
.....	
.....	
.....	
.....	
.....	

[5] The following agreement supplementary to and explanatory of the scale was also adopted:

Agreement. Made at Potsville this 29th of July, 1870, between the *Committee of the Anthracite Board of Trade* and the *Committee of the Workingmen's Benevolent Association.*

"It is agreed that the *Workingmen's Benevolent Association* shall not sustain any man who is discharged for incompetency, bad workmanship, bad conduct, or other good cause; and that the operators shall not discharge any man or officer for actions or duties imposed upon him by the *Workingmen's Benevolent Association.*

It is further agreed that the spirit and intention of the resolution (called the equalization resolution) passed by the *Workingmen's Benevolent Association,* is that each man shall work regularly; and it is the place of the bosses and operators to see that he does. . . .

For obtaining the price of coal monthly, the president of the *Anthracite Board of Trade* and the president of the *Workingmen's Benefit Association* of Schuylkill County shall meet on the twentieth day of each month and select five operators who shall on the 25th inst. following produce a statement, sworn or affirmed to, of the prices of coal at Port Carbon for all sizes above pea coal.

The five operators shall be selected from the list of those shipping over forty thousand tons annually, but none shall be selected the second time until the list is exhausted.

The price of coal so obtained shall fix the rate of wages for that month; and this agreement in regard to the mode of obtaining prices shall remain in force during the year 1870."

the recognition of unions, and the question of wages and conditions of employment. These questions were finally settled by arbitration.[6] Within a few months the price of coal fell considerably below the basis adopted. Although it was a violation of their agreement, the miners demanded that wages should continue on the scale basis and the employers were forced to concede to their demands in one company after another.[7] The lack of a conciliatory spirit and the want of good faith on both sides brought these first attempts to form joint agreements to an end early in the seventies.

The miners[8] and operators[9] in the bituminous coal regions have furnished many examples in making mutual concessions and in keeping good faith in collective bargaining.

After continuous strikes and lockouts for over ten years in the bituminous coal regions, traces of a more conciliatory spirit came into evidence in the early eighties. January 3, 1880, several hundred miners obtained a scale of wages from operators

[6] In the articles of agreement adopted between the *Anthracite Board of Trade* and the *Miners' and Laborers Benevolent Association* provisions for future arbitration was made as follows:

"I. All questions of disagreement in any district, excepting wages, which cannot be settled by parties directly interested, shall be referred to a district board of arbitration, to consist of three members on each side, with power, in case of disagreement, to select an umpire whose decision shall be final. No colliery or district to stop work pending such arbitration.

II. If any question arises involving the whole county, a board of arbitration shall be chosen, consisting of five members on each side, with the same rights and duties as for district boards."

[7] Pennsylvania, Bureau of Industrial Statistics, *Report*, 1880–81, 286–305.

[8] For the general principles of the *United Mine Workers* see the *Constitution and Laws of the United Mine Workers of America Established Jan. 25, 1890.*

Also compare the *Official Prospectus, Journal, and Roll of Honor of District No. 12 of the United Mine Workers of America Containing a History of the Mining Industry of Illinois, History of the United Mine Workers of America, Aims and Objects, etc., Chicago, 1900.*

Also see the *Report of William B. Wilson, National Secretary-Treasurer of United Mine Workers of America Year Ending Dec. 31, 1902.*

The general policy of the *United Mine Workers* may be seen in the *Minutes of the Annual Conventions from 1900 to 1902;* and in the *Minutes of the Special Convention, Called to Consider the Anthracite Strike, Indianapolis, Ind., July 17, 18 and 19, 1902.*

[9] For the principles of the *Illinois Coal Operators Association* see their *Constitution adopted Jan. 29, 1901; Effective April 1, 1901.*

Also see pamphlets by Herman Justi, Commissioner of the *Illinois Coal Operators Association*, on *Plans of Conciliation and Arbitration; The Illinois Coal Operators' Plan for Preventing Strikes; Organization of the Employers Class;* and, *Common Sense and the Labor Problem.*

in the Mineral Ridge district of Ohio. Similar concessions were made by operators in several other localities about this time. These scales applied only to single mines and were usually obtained as concessions after successful strikes.[10] The first movement toward forming a national system of collective bargaining in the bituminous fields occurred in 1885. In that year a conference was held between representatives of the operators and miners of Ohio, Indiana, the northern district of Illinois, and the western portion of Pennsylvania. The following year they held another conference at which they entered into an agreement and adopted a scale of wages adjusted to the various competitive districts. These interstate agreements fixing the scale of wages and regulating conditions of employment, were entered into for three successive years. In 1889, the operators of the eastern, central, and southern districts of Illinois refused either to take part in the conference or pay the scale of wages made for their districts. Their competition compelled the operators of northern Illinois to withdraw and so this first interstate, joint conference movement came to an end. At the last annual conference one of the operators from Pennsylvania said:—"Three or four years ago . . . we met together. . . . After a great deal of discussion and several conferences, we found a common standing ground. We formulated scales; we established peace. . . . We established good will where before had been either open warfare or an unfriendly peace. . . . We have accomplished marvelous results during the last three years. We are convinced of the wisdom and justice of the principles of arbitration. . . ."[11] This witness to the value of joint agreements was endorsed by the subsequent action of the miners and operators of Ohio and Indiana, who continued to meet in separate state conferences after the interstate meetings had come to an end.[12]

From 1890 to 1896 the wages of bituminous workers in Illi-

[10] Ohio, Bureau of Labor Statistics, *Fourth Annual Report*, 1176.

[11] *Miners and Operators Fourth Annual Conference* held at Indianapolis, Feb. 5–7, and at Columbus, Mar. 12–14, 1889. *Official Verbatim Report* 113, 114.

[12] Testimony of John Mitchell, President of United Mine Workers of America, before U. S. Industrial Commission, July, 1901. *Ind. Com. Report*, XII. 698.

nois decreased some 17 per cent. In other mining districts wages declined sharply. In the early part of 1894 the United Mine Workers of America agreed in their convention that they would require a uniform scale of all coal operators in the country. The refusal of operators to concede the rate, resulted in a general strike in which more than 125,000 workmen were involved. After eight weeks the strike resulted in a compromise.

The disastrous results of the bituminous coal strike of 1897 upon miners and operators alike, led to an understanding whereby a joint conference of the operators and miners of Illinois, Indiana, Ohio and the western part of Pennsylvania was held in the spring of 1898.[13] This conference[14] agreed upon a scale of wages and the conditions of employment which were to prevail in the four competitive districts for the following year. Since that time a joint conference has been held each year.[15] Some of the substantial results which bituminous miners have obtained from this system of collective bargaining are:—An average increase of 40 per cent in wages, the establishment of the 8-hour working day, the semi-monthly payment of wages in cash, and the regulation of the size of the screens. On the other hand, the operators have gained through the establishment of a fair competitive basis, and the adjustment of labor disputes without interruption of work.[16]

A strong guarantee for industrial peace is found in the elaborate system of arbitration within the trade, which has been developed in these joint annual conferences between bituminous miners and operators.[17] The present agreement between the

[13] Ibid. 698, 699.

[14] For a complete account of this conference see *Official Report of Proceedings of the Joint Conference of Miners and Operators, Held at Chicago, Ill., Jan. 17-28, 1898.*

[15] See the *Official Report of Proceedings of the Annual Joint Conference of Miners and Operators of Illinois, Indiana, Ohio, and Pennsylvania in Interstate Convention, for the years 1899-1902.*

Also compare the *Proceedings of the Joint Convention of the Illinois Coal Operators Association, and the United Mine Workers of America, District 12, Feb.24 to March 13, 1902.*

[16] Testimony of Hermon Justi. Commissioner *Illinois Coal Operators' Association*, before the U. S. Industrial Commission. May 13, 1901. *Ind. Com. Report*, XII, 677-97.

[17] For typical agreements see the *Joint Interstate Agreement, the Illinois State Agreement*, and the *District and Local Agreements, for the Scale Year Ending March 31, 1901. Issued Oct. 1, 1900, by the Commissioner of the Illinois Coal Operator's Association.*

Illinois Coal Operator's Association and the United Mine Workers of America, District, Number 12, makes the following provision for the adjustment of disputes: "In case of any local trouble arising at any shaft through such failure to agree between the pit boss and any miner or mine laborer, the pit committee and the miners' local president and the pit boss are empowered to adjust it; and in the case of their disagreement it shall be referred to the superintendent of the company and the president of the miners' local executive board, where such exists; and shall they fail to adjust it—and in all other cases—it shall be referred to the superintendent of the company and the miners' president of the sub-district; and should they fail to adjust it, it shall be referred in writing to the officials of the company concerned and the state officials of the United Mine Workers of America for adjustment, and in all cases the miners and mine laborers and parties involved must continue at work pending an investigation and adjustment until a final decision is reached in the manner above set forth." To provide against any possible interruption of work, except in case of a general strike of the entire district, the contract further provides that, if any men refuse to continue work on account of a grievance which has not yet been adjusted, and if such action is likely to impede the operation of the mine, then the pit committee shall be under obligation to furnish men to take the vacant places at the scale rate, and members of the United Mine Workers shall be in duty bound to fill the positions so appointed by the committee. This arrangement places the whole strength of the National body back of the enforcement of the contract. This guarantee of peaceful adjustments is one of the advantages gained by operators from their full "recognition" of the local and national unions.

Transportation. The systems of collective bargaining in force on our leading railways, present a marked contrast to the methods of individual bargaining during the early period of organization among railway employees. The one-sided attempts of either employers or employees to modify conditions of employment during the period of weak organizations among rail-

way workmen invariably resulted in desultory warfare[18] in which both sides suffered. That the railway strikes of the seventies were largely due to the attempt of employers to determine conditions of employment "without any interference with their business" by their workmen is indicated by various lines of evidence. The Joint Committee of the Pennsylvania Legislature appointed in 1878 to investigate the causes of the strikes reported that "The riots grew out of the strike of the railroad men, and the strikes themselves were the protest of the laborer against the system by which his wages were arbitrarily fixed and lowered by his employer without consultation with him and without his consent. There are many other causes that combined to bring about the strikes, but the cause mentioned underlies the whole question, and it is the foundation of all the trouble." Since that time organization among railway employees has developed until their participation in fixing conditions of employment is "recognized" as a matter of course for the stronger unions and questions in dispute are usually settled in peaceful conferences between representatives of the companies and of the workmen.[19]

At the present time the Locomotive Engineers,[20] the Railway

[18] For an account of railway disputes during this period see the *Pennsylvania Bureau of Industrial Statistics Report for 1880-81.* See especially the accounts of the strike on the Pennsylvania Railroad, in 1873; on the Erie, in 1874; on the Delaware, Lackawanna, and Western, in 1875; on the Ohio and Mississippi, and on the Delaware, Lackawanna and Western, in 1876. For the great strikes of 1877, see the Report of the Joint Committee of the State Legislature of Pennsylvania appointed in 1878 to "examine into . . . the railroad riots." The railroads involved in these strikes included: The Baltimore and Ohio; the Pennsylvania Central; the Lake Shore and Michigan Southern; the Erie; the Pittsburg, Cincinnati and St. Louis; the Pittsburg, Fort Wayne and Chicago; the Vandalia; the Ohio and Mississippi; the Philadelphia and Reading; the Philadelpha and Erie; the Cleveland, Columbus, Cincinnati and Indianapolis; the Erie and Pittsburg; the Chicago, Alton and St. Louis; the Canadian Southern; and some minor roads.

[19] The following periodicals devoted to the interests of railway employees give contemporary data as to the condition of workmen in different branches of the railway service: *Brotherhood of Locomotive Engineers' Journal, Locomotive Firemen's Magazine, Railway Conductor, Journal of the Switchmen's Union, Railroad Telegrapher, Railroad Trainmen's Journal, Trackmen's Advance Advocate.*

[20] See *Grand International Brotherhood of Locomotive Engineers, Constitution and By-laws. Instituted at Detroit, Mich. Aug. 17, 1863, as the Brotherhood of the Footboard. Reorganized at Indianapolis, Ind. Aug. 17, 1864 under Present Name and Title. Revised, May, 1892,* Cleveland, 1892. Section 8 of the Standing Rules reads as follows: "Any chairman of a general committee of

Conductors, the Locomotive Firemen,[21] and the Railroad Trainmen[22] all have elaborate systems for carrying on negotiations with employers. Their agreements are made with the separate railway companies[23] in conferences between officers of the brotherhoods and those of the railroads.

adjustment when called upon by one or more sub-divisions on his system, shall be empowered in conjunction with local committees to adjust if possible all differences that may arise betweeen members and their employers without convening the general committee of adjustment. If unsalaried his pay for such services shall be raised by an equal assessment on the members of the sub-division or sub-divisions making the call who are employed upon said system."

Also see the *Standing Rules, 1902, of the Grand International Brotherhood of Locomotive Engineers*, given in appendix 4.

[21]See *Brotherhood of Locomotive Firemen, Organized Dec. 1, 1873, Constitution Revised Sept. 1892* Terre Haute, Ind. 1892.

Also see the *Rules Relating to Locomotive Firemen on the Chicago, Rock Island, and Pacific Railway for 1902.* Given in Appendix 5.

[22]See *Brotherhood of Railroad Trainmen, Organized at Onconta, N. Y., Sept. 23, 1883; Constitution and General Rules, Revised and Amended . . . in Effect on and after Aug. 1, 1901.* Cleveland, 1901.

[23]Agreement between the *Ohio and Mississippi Railway Company*, and the *Brotherhood of Locomotive Engineers* and *Brotherhood of Locomotive Firemen, 1890.*

Schedlue of Wages to be Paid Engineers and Firemen on the Ohio & Mississippi Railway.

Article 1. The rate for passenger engineers shall be three and two-elevenths (3 2-11) cents per mile; the rate for freight engineers shall be four (4) cents per mile for four wheel and six wheel connected engines; and four and one-fourth (4¼) cents per mile for consolidated engines. In all cases where freight trains turn at Cochran and Vincennes there shall be an allowance of twenty (20) miles as an extra basis of pay, and local rate with twenty (20) miles added shall be paid for the train known as the Lebanon Coal train, to any point where it may run.

The firemen of road engines to be paid fifty-four (54) per cent of the rate of wages paid to their engineers.

Article 2. The rate of local or way freight engineers shall be five (5) cents per mile actual milage on the main line, and four and one-half (4½) cents per mile on the Springfield Division and Louisville Branch.

Article 3. Switching engineers on the Springfield Division shall be paid two dollars and fifty cents ($2.50) per day's work, twelve hours or less to constitute a day's work.

Article 4. Engineers running between Watson Junction and Jeffersonville shall be paid three dollars and twenty-five cents ($3.25) per day's work, twelve hours or less to constitute a day's work.

All other rates not specified in these articles to remain as heretofore.

Article 5. When, after being called for trains at terminal points, engineers are delayed two hours or more, they shall be paid thirty-five (35) cents per hour for the whole time delayed, less thirty (30) minutes; if delayed less than two hours, no allowance to be made.

Article 6. Engineers and firemen dead-heading over the road under orders shall be paid two cents per mile for distance traveled.

Article 7. Switching engineers and firemen having regular engines shall not be held off to give work to extra men.

Article 8. Engineers called from duty on Company's business shall be paid

Practically all of the railway companies now recognize the stronger brotherhoods and deal directly with their officers. The organizations of the less skilled employees[24] are much weaker and up to the present time they have not had so great an influence in determining their conditions of employment.

Street railway employees have also been able to secure collective contracts within recent years. The principal concession which they have so far been able to gain through collective action has been a shortening of the hours of work.[25]

three dollars and fifty cents ($3.50) per day and expenses, and firemen one dollar and eighty cents ($1.80) per day and expenses.

Article 9. Promoted firemen to be eligible to full pay of freight engineer after one year's service as engineer; and. when promoted, to be paid three (3) cents per mile for the first six months, and three and one-half (3½) cents per mile for the second six months.

Article 10. If any engineer or fireman shall be suspended or discharged, he shall be entitled to a fair and impartial hearing with the privilege of calling witnesses to testify on his behalf; and, if he be exonerated, shall be re-instated and paid for time lost; such hearing and investigation shall be had within ten days from date of such suspension or discharge unless insuperable difficulties prevent. It being intended that he shall have a hearing at the earliest reasonable, practicable date.

Article 11. Fines shall not be imposed upon engineers for loss or breakage of tools, or damage to rolling stock, or for killing live stock.

Article 12. Right to regular engines or runs shall be governed by seniority and capacity in road service on respective divisions, provided record is otherwise good.

Artice 13. The list of extra men shall not be increased by the addition of new men as long as extra men can do the work and make reasonable wages. A monthly statement from the pay-roll of wages made by extra men shall govern such cases.

Article 14. A copy of these articles shall be placed in the hands of the Master of Rolling Stock, Superintendent and Train Masters for reference.

Article 15. The above to be acted upon in good faith on the part of the O. & M. Railway Company and its engineers and firemen. Thirty days' notice of a desire to change the main features of this schedule of wages shall be given by either party desiring it, to provide ample time for careful consideration and conference about the subjects submitted.

Ohio and Mississippi Railway Company, by

(Signed), J. F. Barnard, *President.*

(Signed), W. N. Cox, *For the B. of L. E.*

(Signed), Jas. Gabriel, *For the B. of L. F.*

[24] See *Switchmen's Mutual Aid Association of North America, Constitution and By-laws, Adopted . . . 1886, Revised, 1892; International Brotherhood of Maintenance-of-way Employes, Constituton of grand lodge and by-laws for subordinate lodges, Revised and amended at St. Louis, Mo., . . . 1902;* and *Order of Railway Telegraphers, Constitution . . . 1901.*

[25] Interview with W. D. Mahon, President Amalgamated Association of Street Railway Employees of America, May, 1902.

For a brief statement of conditions in street railway employment see:

Among the groups of workmen connected with water transportation the longshoremen[26] have entered into national agreements with their employers.[27]

Cigar Making. The President of the Cigar Makers' International Union recently declared that "the most potent factors which go to make a union strong and permanent are, first, high dues; second, a beneficial system; third, discipline—which can only be had where the first two are in operation; and fourth, a union label where convenient to use."

That a wise use of these several factors has been effective in the case of the cigar makers is evidenced by the history of the Cigar Makers' International Union. Within the past three decades this union has organized a straggling lot of sweatshop workers into a disciplined body of union men.

Before the organization of the International Union the evils of child labor, of tenement manufacture, and of the truck system were characteristic features of the trade.[28]

Through organized collective action the truck system has been entirely abolished, child labor and tenement house manufacture have been eliminated in all but non-union shops, the eight-hour day has been established, and the general standard

Amalgamated Association of Street Railway Employes of America, Organized at Indianapolis Ind., Sept. 15th, 1892, Constitution and General Laws 1895, and *Year Book, Giving Wages, Hours of Labor and Condition of the Organization,* Detroit, 1901.

[26] For forms of organization among longshoremen see *Longshore Lumber Handlers' Association By-laws,* N. Y. 1888, and *International Longshoremen, Marine and Transport Workers' Association, President's Annual Report to the Delegates, 11th Annual Convention, 1902.*

[27] In an address before the National Conference on Industrial Conciliation . . . held in Chicago in 1900 President Keefe of the International Longshoremen's Association said: "The Longshoremen's organization has insisted on all its agreements being carried out in both letter and spirit. To illustrate the fairness with which the longshoremen deal with their employers,—we have in the port of Buffalo a local union which violated its agreement with the employers during the month of July while a convention of longshoremen was being held in Duluth, Minn. The matter was brought to the attention of the convention and it immediately notified our local represenative to furnish men at our expense to take the places of our men who had violated the agreement, and they were not members of our organization."

[28] Mr. Perkins, the International President, informed me that workmen were formerly paid a certain percentage of the cigars which they made. Practically the only available market, in which they could sell these cigars, was in saloons. On this account, the truck system encouraged drinking and so had an especially demoralizing influence on the members of the trade.

of life has been so raised that in the decade from 1890 to 1900 the average length of life for union cigar makers was increased six years[29].

These changes have come about slowly and not without industrial warfare.[30]

The history of the International Union presents practically

[29]For vital statistics see: *Cigar Makers' Official Journal*, September 15, 1901.

Also see files of *Official Journal* from 1890 to 1900 for statistics as to the decrease of tuberculosis among cigar makers and the claims that the decrease is due to better conditions in the trade.

[30] Interesting records of early strikes are found in the *Workingman's Advocate* and in the *Cigar Makers' Official Journal*. The following letter from Cincinnati addressed to the International President is printed in the *Workingman's Advocate* for July 16, 1870. . . . "Show me the record of any union that has stood out as manfully against a combination of employers whose sole object was (not money) to crush out the existence of the International Cigar Makers Union. . . . Again supposing union men would have submitted to any bill of prices, the bosses could not have hired them as long as they belonged to any union as such was their law. . . . In the latter part of 1866 the bill of prices was as follows: $9.00, $11.00, $13.00 and $15.00 [per thousand]. We worked for these prices until October, 1869, when a dollar advance was asked and obtained. The bosses then formed their union with a view of destroying ours and a few weeks before Christmas discharged all hands, not assigning any reason whatever except that they henceforth will employ no man belonging to the union. . . . eighteen weeks elapsed . . . well, after the men were at work some time the bosses individually threatened another strike as soon as their stock would be replenished; also that they would import coolies from California. The men thereupon of their own accord . . . the price of living having been reduced since the war and also many other unions being on a strike . . . established a bill of prices at $10.00, $11.00, $13.00 and $15.00 . . . the same as in 1867, 1868 and 1869 . . . with the exception of $1.00 more at present for common Ohio cigars. . . . We have every prospect of holding this price, a fair one I think, for some time to come," . . .

The following letter from Richmond Va., Union No. 133, appears in the *Cigar Makers' Official Journal*, Oct. 10, 1879. . . . "On September 9th a special meeting of this union was called . . . to inquire into the advisability of adopting a bill of prices for this city. . . .On presentation of the bill to the bosses, all agreed to accept it except L—. and M—. and R—. L—. started immediately for Baltimore for hands but was not successful. . . . afterwards eight men . . . were brought from Baltimore . . . Seventy-five of us went to meet them . . . but they got into a stage with their employers and were driven to the factory where they were kept . . . from Tuesday morning until Thursday night. There some of the pickets collared them and they had a talk together; . . . they promised to come to our meeting next day which they did. You may imagine how bitter the feeling was against them, yet when they explained their position . . . they were taken into the union. They then refused to go to work until the old hands were put to work at the new price. The bosses agreed to this and twenty-five men will go to work on Monday at the union price. We have our sixteen men yet, but hope through perseverence and good conduct to make this strike a complete victory for us." . . .

all the phases through which unions ordinarily are compelled to pass before reaching the stage of recognition and of peaceful negotiation with employers on the basis of mutual strength and mutual respect. The International President in an address in 1873 briefly outlined the early history of the organization as follows:

"The National Union was created in 1864 in the city of New York, by the spontaneous act of the local unions already organized. Certain powers were conferred on it by the local unions which from year to year were extended and enlarged so as to meet the requirements and wants of the local unions and bind them into one compact body, having one object in common, the elevation of the trade of cigar making. But while the unions were consolidating themselves no determined effort was made to consolidate or organize the great mass of cigar makers into the local unions. A few unions came into existence by local efforts and became a part of the International body, but yet the great mass of the trade had not been reached, but remained unorganized."[31]

[31]Cannon, W. J., International President, *Address at Cleveland, Dec. 3 1873.* Commenting on the difficulties of the time, the President continued: "Early in its history we find the International Union declare by law that 'no local union shall elect to membership any cigar maker who is under charges to any other union.' The failure of a cigar maker to connect himself with a union was in itself considered a charge. The jurisdiction of the various local unions was so defined as to embrace every cigar maker in the country, and according to the construction placed on the laws any cigar maker who failed to connect himself with the union having jurisdiction was liable to be fined by that union. Practically it made them all unfair men before any effort had been made to bring them within a union or to organize them into unions. Whenever one of these men applied for membership in a union the union from whose jurisdiction he came, was not slow to prefer the charges of 'unfairness' and impose the fine which in nearly all cases was excessive. . . . The International Union has at conventions issued proclamations of amnesty for these unfair men and has recommended the local unions to annul their fines and withdrew their charges. . . . Some of the unions would question the right of the International Union to issue these proclamations and denounced them as edicts, others rejected them . . . others were entirely indifferent. . . . That the work of organizing the trade is the duty (or should be the duty) of the officers of the International Union is a principle which we have always believed in and contended for, but as long as local unions themselves retain their prejudices and restrain their International officers . . . there is little to hope for in the way of thorough organization. In this unorganized condition with three-fourths or more of the trade under fines and charges to the Unions we have adopted a strike policy and framed laws to support them and have in this way spent thousands of dollars: for what! to enlarge the field of operation for the unfair men and contract our

Advising as to the needs of the union the President continued: "What we need and need badly is thorough organization . . . this striking system without efficient organization lies at the very root of all our woes and if continued in, under existing conditions, must inevitably lead to the disruption and entire annihilation of the International and local unions."

The difficulties complained of by the President in 1873 are usually present in the early stages of unionism. With more complete organization, discipline is more readily enforced and the tendency to strike is held in check through the conservative influence of union officials.

The methods by which discipline was gradually extended over the local unions in case of strikes are indicated in the International Constitution for 1875. Art. 9, Sec. 1, reads: "The International Union guarantees its moral and pecuniary support to all its members in all difficulties which may arise between them and their employers after all means for a satisfactory and amicable adjustment have failed . . . in no case to exceed $7.00 per week for any one member."

Sec. 2. "When any difficulty arises between the members of any union and their employers, the proper officers of the union shall furnish a full and official statement of the same to the International President who shall submit the same to the other officers composing the Executive Board and after a full and sufficient investigation of all facts in the case if they approve of the same, the International President shall issue a circular setting forth the facts to all the unions and the number of members who are idle through such difficulty and ordering them to their assistance and he shall also prescribe the manner in which such assistance shall be sent and the persons appointed to receive the same. Unions failing to comply with the requirements of the Executive Board in such case shall be de-

own. . . . International officers ought to visit every section . . . and organize them into unions . . .when this was attempted . . .a howl arose . . . against the international officers for extravagance. It was this short sighted policy in the beginning of our organization that has crippled it today. Other organizations of labor have made the same mistake at their commencement . . . but we continue . . . in the same well worn rut . . . and learn nothing from the lesson of the past."

prived of the assistance of the International Union in similar cases."

A crisis in the history of cigar makers occurred in 1877 when more than 10,000 men struck in New York City for higher wages and better treatment.[32]

The National Cigar Manufacturers' Association united the employers in solid opposition to the demands of the workmen. The following resolutions of the employers' association plainly indicate their attitude during the strike:

"Resolved, That we hereby reaffirm and declare determination not to yield to the unjust demands of our late workmen or to reinstate them in our employment while members of the Cigar Makers' Union. That it is our right to operate our factories under such regulation, just to our workmen and just to ourselves *as we may prescribe.* That the recognition by us of the startling demands of the body styling itself the "Central Organization" would be detrimental in the highest degree to the best interests of employers and employees. That it is the right of every workman to apply for and to resume work whenever he desires to do so without hinderance from his fellow workmen. That our thanks are due to those of our workmen who have remained faithful to us during this period of disorganization. That we cordially invite our late workmen to meet us at our respective factories, either individually or by proper representation of their own number and we shall at any time cheerfully confer with them if thereby an end to their present unhappy condition may be reached. That we recognize the principle that labor and capital have common interests and are dependent upon each other and we recommend the cultivation of a greater degree of confidence and a more perfect spirit of harmony between employers and the employed in our own as well as in all other branches of industry.[33]"

The strike lasted 107 days and was won by the employers who sought to guarantee their victory by requiring the workmen to take an iron clad oath that they would not belong to

[32] *Cigar Makers' Official Journal*, Nov. 10, 1877 and Feb. 10, 1878.
[33] Printed in the *Cigar Makers' Official Journal*, Nov. 10, 1877.

any union. The attitude of the International Union after the strike is reflected in the following statement:[34] " . . . the strike has ended but the cause still remains. Although defeated the cigar makers do not feel themselves conquered . . . want of thorough organization and insufficient means have been the main cause of their defeat." Several years later the demoralization subsequent to the strike was admitted by union leaders. In recounting their history the *Official Journal* in 1881 stated that "Not quite four years ago unionism . . . was almost extinct among cigar makers . . . the once powerful organization . . . was left but a skeleton. The entire International Union numbered 17 unions in good standing. Outside of New York, Chicago, and Detroit there were but 217 union men in the United States and Canada." Yet it was claimed by leaders of the Union that the strike "gave an impetus to the reorganization of cigar makers all over the country" and this claim seems to be borne out by the subsequent growth of the International Union. In 1877 there were 17 unions with a membership of 1,016; in 1879, 36 unions with a membership of 1,250; the following year the number of unions reached 74 with 3,800 members not including travellers on the road; and by Sept. 20, 1881 the total number of unions reached 126 with a membership of 12,709.[35]

With the increase in numbers there was also a healthy increase in the discipline enforced by the Executive Board of the International Union which realized the necessity of careful, conservative action to cope with the organized manufacturers in determining conditions of employment. At the International Convention in 1880 the President advised the delegates as follows: "All shop strikes should cease. . . . Let them submit their case to the union before taking action and thus it can be calmly discussed. No shop should have the right of deciding the future of a local union and in a certain degree the future of the International Union."[36]

[34] Ibid.

[35] *Cigar Makers' International Union 14th Annual Session, Annual Report of the President.* Printed in the *Official Journal* Oct. 10, 1881.

[36] *President's Annual Report to the Delegates of the 13th Session of the Cigar Makers International Union in convention assembled.* Printed in the *Official Journal,* Oct. 10, 1880.

The increasing concentration in the cigar making industry was noted in subsequent Conventions of the International Union and in 1881 the President[37] reported: "Since the last convention the situation has completely changed; more than one half of our members being concentrated in five centers of industry, opposed by large monopolies, employing from 100 to 1,000 cigar makers, who wield in the cigar trade a power as great as that of our railroad, mining, and cotton loom corporations in their respective branches of industry, a power which hangs like a dark threatening cloud on the horizon, menacing destruction. That power must be confronted with equal if not greater power. Upon you who are here assembled to represent the cigar makers will devolve the duty of placing our organization on an equal footing with existing forces.[38]

"Through a constant extension of local organizations[39] bound together and directed by the strong arm of the International

[37] *Cigar Makers' International Union. 14th Annual Session, Annual Report of the President.* Printed in the *Official Journal,* Oct. 10, 1881.

[38] Compare the following statement from the *President's Biennial Report* in 1887: Within the last eighteen months combinations among manufacturers have increased rapidly in the various branches of industry. Almost every week we hear of a new association of employers or of an old one holding its regular convention. The trades unions are thus brought face to face with a most wealthy, most unscrupulous and skillfully *organized* opposition—a power not directed by the open form known to our unions, but for the most part working in secret. . . . Its deliberations are strictly private and its edicts go forth in confidential circulars. *The greatest offense known to these secret organizations is membership in a trades union.* . . . In order to meet these new elements in industrial conflicts, the unions must be placed on the soundest foundation."

Also compare the following articles of the *Cigar Manufacturers' Association of New York.* Printed in the *Cigar Makers Official Journal,* Aug. 1890.

Art. II. Objects . . . to unite cigar manufacturers for their mutual protection against any unjust demands of cigar makers or their unions.

Art. III. Sec. 1. That the prices which shall be paid by the members of said association to their workmen on Aug. 6, 1890, shall be the accepted binding price list of our respective firms.

Sec. 2. Any unjust demands . . . by any of their workmen shall be resisted by the united action of all said members. . . .

Sec. 3. No member . . . is to reduce or increase the wages of any of his or their operatives without . . . the consent of said Association. . . .

Sec. 4. Every unjust interference on the part of workingmen or their unions with the business of the factories of the members of the Association and with the right . . . to employ or discharge hands, or with the methods

[39] By 1900 the membership included 34,000 workmen who kept their dues regularly paid and a total of over 77,000 who were employed in "jurisdiction places."

Union the cigar makers have built up one of the strongest and one of the most democratic[40] labor organizations of the present time. The financial strength of the Cigar Makers' International Union has been thoroughly established by the system of high dues maintained by the organization.[41] With an ample reserve

and regulations for conducting such business shall be resisted in such a manner as may be lawful and as two-thirds vote of the Association may determine.

Art. V. . . . In case of difficulties . . . between any members of the association and their operatives . . . immediate notice . . . shall be given by said members to the President of the Association . . . who shall notify . . . the Committee of Investgation . . . which shall meet at the factory within twenty-four hours. . . .

Art. VI. Said Committee of Investigation shall impartially hear the grievances complained of by both members and their workmen and shall equitably decide the same. In case said workmen shall refuse to appear before said Committee after being invited to appear, the latter shall nevertheless have the power to decide matters submitted to it for decision.

Art. IX. . . . A fine . . . shall be imposed on members of the Association on conviction of a violation of any of the provisions of the Constitution . . . or regulatons of this Assocation.

[40]See the files of the *Cigar Makers' Official Journal* as to the practical working of various devices providing for: the referendum, the division of funds among the locals, the appeal of grievances, and similar institutions of the *International Union*.

[41]The following statement, from the *Annual Report of the President*, given in the *Cigar Makers' Official Journal* for April, 1902, gives a brief summary of receipts and expenditures for the current year: "It presents an array of figures that is instructive and interesting, showing as it does the total cost for the maintenance of each department and each benefit. A reference to the totals will show that the aggregate financial transactions amounted to over one million dollars. The largest single expenditure was for death benefit, which amounted to $138,456.38, which shows an increase over the year 1900 of $40,165.38; the second largest expenditure was for sick benefit and amounted to $134,614.11. and shows an increase of $17,158.27 over the year 1900. The third largest on the list is the amount for strike benefits, $105,215.71, which is $32,607.52 less than was expended for a like purpose in 1900. The amount for out-of-work benefits, $27,083.76, remains practically the same as last year. being only $3,186.76 more. Despite the extraordinary large amount expended for strike benefit the increase in the funds was $6,318.09. In this connection it should be remembered that a one dollar assessment was levied last year. The amount for strike benefit has never been exceeded except in two instances in the history of the International Union. The exceptions were during the Cincinnati strike in 1884 and the New York strike in 1900. The great bulk of the money for strike purposes went to Montreal, Can., which expended for this purpose about $64,000; $13,000 went to Dayton and about $8,000 to Philadelphia, Pa., for a like purpose. The balance, about $20,000, was expended in all other minor strikes through the country. In the last ten years up to 1900 the average yearly expenditure for strike benefit purposes was about $27,000 per year. It will be noticed by a reference to the table of benefits paid that the total benefits for 1901 show an increase of about $40,000 over 1900. A reference to table of benefits will disclose the fact that we expended all told for benefits last year $450,022.69, which went to fight the battles and relieve the distress of the members and their families and friends. No one regrets the expenditure of this vast sum—nearly one-half a million dollars—on account of the mere loss of the amount.

fund and a strong system of benefits the Union has been able to withstand the disintegrating effects of industrial depressions[42]

On the contrary, we are all proud of the fact and only hope that these amounts will double and they will as we grow older and more powerful. Since the reorganization of the International Union, dating from 1879, we have expended all told in benefits the magnificent sum of five million one hundred and eighty-seven thousand five hundred and seventy-three dollars and twenty-eight cents ($5,187,573.28), and feel that we have not lived in vain.

To the studiously inclined and to those not familiar with our system let it be said that the $80,000 outstanding loans is not included in the balance on hand. Note should also be taken of the fact that the items, assistance to unions, $90,000, and assistance from unions, $89,000, is simply equalization money shifted from one union to another and is not actual receipts or expenditures in addition to the dues, assessments, etc. It should also be remembered that the accounts and figures represent exclusively the accounts and financial transactions of local unions. The only way that the International Union figures in the accounts is by the moneys sent here by local unions for the running expenses of the International headquarters. The expense of the International office does not show in the report, but are [is] accounted for in each issue of the official journal. The funds of the International Union belong to and are centered in one common fund, but each local union holds its share of the funds in trust for the International Union. And while each local union keeps an account of its own financial transactions each have to report to headquarters where the accounts are also kept and drawn off annually and presented as you see in this issue. This plan insures perfect control and allows each member to know the standing of his own union as well as the standing of each local union and to know just what is being done with the fund in which, under our system, he, with all others, is equally interested and a part owner. Under our system one union that has exhausted its funds by legitimate expenditure can, on application to headquarters, have funds sent from any other local union. For instance, over $60,000 was sent last year to the Montreal union during their strike.

The report is referred to your careful study and consideration, giving as it does a fair idea of the vast financial transactions, and we feel that it will give all a clear knowledge and understanding of the financial condition of the International Union."

[42]See Editorial, *"Industrial Depressions,"* in the *Cigar Makers' Official Journal* for May, 1894. Also compare the following statement from *"Tobacco,"* an organ of tobacco manufacturers and wholesalers. Reprinted in the *Cigar Makers' Official Journal*, for Oct. 1896. "A careful reading of the report of President G. W. Perkins, which was read at the opening session of the twenty-first convention of the Cigar Makers' International Union last week, contains several important items respecting the inside workings of the union which can not fail to be of interest to those who manufacture and sell cigars. The first, and by far the most interesting of these, briefly stated, is that the International Union has suffered no material decrease in its membership during the past two and a half years of business depression, notwithstanding the fact that the organization has been called upon, through the enforced idleness of large numbers of its members, to contribute very heavily to its 'out-of-work' fund during the greater part of this period. It is to this loyalty to stand up under the multitude of hardships which follow in the train of great and widespread business distress, to suffer from loss of work without seeking to cut the union scale of wages, and, on the part of those who have found fairly steady employment, to pay the extra assessments levied by the union for the benefit of their unemployed fellow craftsmen; in all these respects the fealty of the members to their union has been most marked, and to this one fact, more than to any other,

and has been able to extend continuous assistance to local unions in their efforts to secure "Bills of Prices" and desirable conditions of employment."[48]

Several methods of reaching agreements with their employers have been developed by cigar makers. They seldom try to get

perhaps, is to be attributed the strength of the union today as a whole. In the whole domain of business, where can there be found another union which has come through the last panic without suffering a material decrease in the schedule of prices adopted and made to fit the conditions prevailing in prosperous times? Practically this is what has happened in the cigar trade. The trade will probably never know how much of a sacrifice individual members of the Cigar Makers' Union have made to accomplish these results; but President Perkins gives some figures which show how much has been paid out for this purpose."

[48] The *Cigar Makers' Official Journal* gives the following comparison of wages for 1850 and the present time. "For the purpose of giving some slight indication of the march of progress under the trade union system of organization we print herewith a copy of a bill of prices adopted by the cigar makers of Westfield, Mass., in 1850.

The bill is as follows:

Bill of Prices of the Journeymen Cigar Makers of Westfield, Mass., Adopted Nov. 4, 1850.

Imperial Spanish Regalia, 6 inches long	$8 00
Imperial seed and Spanish Regalia. 6 inches long	7 50
½ Regalia Spanish, 5½ inches long	7 00
½ seed and Spanish, 5½ inches long	6 50
½ seed and Spanish. 5¼ inches long	6 00
Spanish Congresso, 6 inches long	7 50
Seed and Spanish, 6 inches long	7 00
Cassadoras Spanish, 5½ to 5¾ inches long	6 00
Seed and Spanish, 5½ to 5¾ inches long	5 50
Spanish La Norma, 4⅞ to 5 inches long	5 00
Seed and Spanish La Norma, 4⅞ to 5 inches long	4 50
Spanish Panetillas. 5½ to 6 inches long	5 50
Spanish Panetillas, 5 to 5½ inches long	5 00
Seed and Spanish Panetillas. 5½ to 6 inches long	5 00
Seed and Spanish Panetillas, 5 to 5½ inches long	4 50
Spanish Panetillas, 4¾ inches long	4 50
Seed and Spanish Panetillas, 4¾ inches long	4 00
Spanish Bagdads, 4½ to 4¾ inches long	4 50
Seed Bagdads, 4½ to 4¾ inches long	4 00
All Ponies. 4½ inches long	4 00
All Ponies, 4 to 4¼ inches long	4 00
All Principe cigars	4 00

All scrap cigars $1 in advance of long fillers. Stripping, 50 cents per M; casing, 20 cents per M.

Resolved, That we earnestly implore all the cigar manufacturers of this town, not to take any person as an apprentice, for a less term than three years.

Westfield, Nov. 4, 1850.

The above prices were for hand work. There were no molds used in this country at that time.

By way of comparison we note that the lowest job on the present bill of prices of Union 28, Westfield, is $8 per M. which was the highest job on the old scale. The highest job on the present bill is $19.00, and the common run of

written contracts, but get—what is an equivalent,—individual employers to accept their "bills of prices" and "union rules."[44] These are posted in union factories and there is a definite understanding between employees and employers that both parties will abide by them.[45] Special rules providing for the regulation of apprenticeship and other matters left to the discretion of the local unions are usually included along with the general rules. In return for a compliance with the conditions demanded by the union, employers are given the use of the union

jobs are from $14 to $17. A cigar that called for $4 or $5 per M under the old bill is $16 or $17 under the present bill.

Despite this showing we occasionally find people who say that the unions have accomplished nothing.

The old Westfield bill is a fair average of the prices paid before the advent of unions and a better life for cigar makers. We especially commend these facts and figures to the young man who has come into the trade and movement since the inaugeration of better wages and who knew nothing of the early struggles of the pioneers to establish and maintian the union. Note the facts and some idea can be had of conditions that would be in force today were it not for the International Union."

[44] *Cigar Makers' Official Journal*, Nov. 10, 1877; Oct. 10, 1880; Aug. 1890; Sept., 1899.

[45] Typical provisions for arbitration are shown in the following bills of prices:

Winona, Minn., Union No. 70. Bill of prices adopted Oct. 4. 1886. . . . "All questions that may arise in regard to this bill will be left to the arbitration board."

Blue Island, Ill., Union No. 247. Bill of prices adopted Aug. 10. 1891. . . . "All jobs not mentioned in this bill shall be left to arbitration by a committee of three from Union No. 247 and a committee of three from the manufacturers."

Boston, Mass., Union No. 97. Bill of prices adopted Apr. 14. 1892. . . . "Grievances on any jobs not provided for in this bill shall be referred to a committee of Union No. 97 and a representative of the manufacturer. . . . When a difference of opinion shall arise in the construction of prices named in this bill, it shall be decided by the Executive Board, subject to an appeal to the Union."

Burlington Ia., Union No. 72. Bill of prices adopted June 25, 1900. . . "All jobs not mentioned in this List of Prices to be left to arbitration by a committee of three manufacturers and three members of Cigar Makers Union No. 72."

Buffalo, N. Y., Union No. 2. Bill of prices adopted May 13, 1901. . . . "Manufacturers who evade the bill of prices are to be denied the use of the label for six months. . . . No union man is allowed to work in shops where non-union men are employed. . . . Any jobs which the bill does not cover are to be referred to the Executive Board of the Cigar Makers Union. . . . Wages are to be paid weekly in cash. . . . There may be one apprentice to two journeymen, two apprentices to ten journeymen, and three apprentices to fifteen journeymen. Every apprentice is to serve three years. . . . All strict union shops are to be furnished free of all charges as many union labels as may be required from week to week. (*C. M. I. U. Const.*, Art. II, sec. 3.)"

label.[46] This label has become such a valuable consideration in the sale of cigars that the International Office is obliged to keep vigilant watch to prevent its being counterfeited[47] and employers, in general, are willing to make concessions to secure its use. Often provisions like the following are attached to "bills of prices:" "Any employer using the union label and violating any of the conditions for its use shall, for the first

[46] The label of the Cigar Makers' International Union is as follows:

"Issued by Authority of the Cigar Makers' International Union of America. UNION-MADE CIGARS. This certifies, That the Cigars contained in this box have been made by a First-Class Workman, a member of the Cigar Makers' International Union of America, an organization devoted to the advancement of the Moral, Material and Intellectual Welfare of the Craft. Therefore we recommend these cigars to all smokers throughout the world. All infringements upon this Label will be punished according to law."

(Signed) G. W. PERKINS, President,
Sept. 1880. C. M. I. U. of America.

The label bears the seal of the international union and the stamp of the local union. The skilful use of scroll work and of various kinds of type makes counterfeiting difficult.

[47] The following letter printed in the *Cigar Makers' Official Journal* for Oct., 1896, indicates the vigilance with which the union guards the label:

Cleveland, O., Oct. 23, 1896.

Union of Cleveland, through their label committee, brought suit against the jobbing firm of Wallace & Schwartz for using counterfeit labels. About an hour before the time set for the hearing the attorney for the firm made a proposition to plead guilty, and desired to know how a satisfactory settlement could be effected. The committee of the union proposed that the firm go into court, plead guilty, pay $75 fine and the costs of the court; make a pledge before the court not to use or handle counterfeits any more, and turn over all counterfeits in his possession to the committee of the union. This was done, and the firm turned over to the committee several hundred counterfeit labels, which were destroyed. The Ohio law makes the minimum penalty $50.

Fraternally.

W. J. Cannon.

Also compare the following statement in the *Union Labor Advocate*, May, 1902: "Recently Albert Goldman, of Rochester, N. Y., was convicted in the Court of Special Sessions, New York City, for selling counterfeits of the Blue Label of the Cigarmakers' International Union, and sentenced to sixty days in the city prison.

Goldman, in his testimony, stated that he got the labels from Gabriel Ginsberg, of Chicago, who was recently convicted in the Criminal Court in this city for handling counterfeit labels, and sentenced to pay a fine of two hundred ($200) dollars and cost.

G. W. Perkins, president of the Cigarmakers' International Union, went to New York City as a witness in the Goldman case, and he says that the label is what is known, technically, as the Wollock (Chicago) counterfeit, and that he is convinced that a gang of counterfeiters, with headquarters in Chicago, are touring the country in an effort to dispose of these counterfeit labels.

The members of the Chicago union are highly elated over the fact that one of these agents has been trapped and convicted.

The sentence of sixty days in prison is the first prison sentence any counterfeiter or handler of counterfeit label goods has ever received."

offense, be refused the use of the label until he deposits the sum of $50.00 with the union as a guarantee for a faithful compliance in the future, and for a second violation he shall be refused the use of the label for the space of six months."[48] In addition to the consideration which the union offers employers in the use of the label, reasons for complying with union conditions are found in the fact that employers who fulfill their part of the conditions agreed upon are not often exposed to the danger of strikes. Although the International Union does not make any special effort to secure written agreements throughout the trade, for quite a number of years some of the older local unions have put their "bills of prices," "working rules," and other regulations in the form of written contracts, signed by representatives of local employers and employees. Most of the older local unions have also developed boards of arbitration and conciliation within the trade. At the present time the International constitution provides for the settlement of local disputes through the appointment of arbitrators chosen from the general body of members. These arbitrators act in conjunction with a committee from the local union involved. The settlement thus secured is made final unless set aside by an appeal to a referendum vote of all the local unions in the International body.[49]

The Place of Collective Bargaining in the Evolution of Industry

The close adjustment of the labor contract to the varying forms of industrial organization is evident in every phase of our industrial evolution.

As our industries were transferred from an individual to an organized basis, the old methods of bargaining became inadequate to meet the constantly changing conditions. As long as the individual labor contract was established through personal conference between master and workman the recognition given to reciprocal rights and obligations secured a fair degree of equity in the employment relationship. Attending the more

[48]See bills of prices for:—Union No. 77, Minneapolis, Minn., Sept. 1, 1899; and Union No. 2, Buffalo. May 13, 1901.

[49]See *Constitution* adopted, 1896, secs. 94, 95, 203 and 204.

complex organization of industry there was a corresponding development of social interdependence, while the separation between employer and employee became more marked. At the present time conditions in many of our large industries are such that employees are shut off from any personal contact with their employers. Recently at the Chicago Commons an employer and an employee who had sustained that relationship for seventeen years met for the first time. This is an extreme example but it serves to bring out the fact, which public opinion is only just beginning to recognize, that a revolution has been wrought in our industrial relations during the past century.

No industrial relation can long survive the reasons for its being. The individual contract squared with industrial and social conditions under individual production. With the development of large industries there followed a corresponding tendency toward collective bargaining.

The close connection between the stages of organization reached in any industry and the corresponding changes in the relation between employer and employee, emphasizes the fact that the development of collective bargaining is conditioned by the forms of industrial organization. While a general statement of the evolution of collective bargaining in our separate industries must always be modified by a consideration of particular conditions, yet a comparative analysis indicates that the general features of our industrial development are recapitulated in our separate industries to a remarkable degree.

Individual Workshops and Customary Regulation. As long as the individual workshop remained the unit in industry, the relation between the master and the journeyman was personal, and individual bargaining enabled the two parties to the labor contract to meet upon the basis of mutual dependence and mutual advantage. Both sides were restrained by customary regulations and, in case of dispute, alternative opportunities gave the workman a position of independence not differing greatly in degree from that of his employer. The interests of master and journeyman were not widely separated and such labor organizations as did exist were mainly for social and benevolent purposes.

Growth of the Factory System and the Development of Labor Organizations. With the extension of the factory system local competition became more intense. Employers were forced to organize their plants on a larger scale in order to secure the economies incident to improved methods of production. Larger groups of workmen were employed in the same shop and it became increasingly difficult for a journeyman without property to grow into the possession of an independent business. The change from individual to organized production separated the workman from the means of production and made him of less consequence in industry. The individual journeyman was no longer as indispensable as the individual master. The industry in which he had formerly taken personal interest and for which he felt personal responsibility no longer afforded the permanency of employment which he had enjoyed under the old customary regulations. The close contact between master and workman gradually disappeared and conflicting interests became more apparent. While the journeyman felt the force of the competition to which the master was subjected in a constant tendency toward lower wages, he was also threatened by the growing competition among workingmen for employment. The difficulties of the time acted as a constant incentive to the organization of journeymen's societies in which common grievances were discussed and common rules of action formulated. These societies first developed the characteristics of modern trade unions in those industries in which factory methods were first established.

Extension of the Competitive Field and Weak Organizations. The increasing size of the business unit due to the introduction of improved machinery was further accelerated by the development of transportation and communication. The competitive field, no longer limited by local conditions, extended rapidly over larger territorial areas. The expansion of business beyond local confines made necessary increased equipment and more efficient organization in industry. The question of economies in production confronted every employer able to survive the exacting demands of a fiercer business rivalry. The cost of labor being so large an element in production offered an in-

viting field to employers for the reduction of expenses. The opposition of labor unions presented few obstacles to this policy because the limitations of local organization made collective opposition on their part impracticable. The organization of industries on a larger scale constantly associated workingmen in larger groups for purposes of production. Employers intent on conserving the advantages incident to their position no longer depended upon the local field for their supply of workmen but filled their factories from districts which offered the cheapest labor. The pressure of competition affected the interests of workmen in the same occupations in similar ways and emphasized the interdependence of laborers competing with each other for employment. The effect of these various economic agencies gradually became apparent in the extension of labor organizations beyond local fields. Recognizing how inadequate their organizations were to make their influence felt in industries which had transcended local limitations, the leaders of the labor movement began to advocate closer coöperation between local unions in the same trades. The unconscious influence of industrial forces gradually brought local organizations into closer affiliation with similar groups and the national form of labor organization was evolved.

Development of Large Industries and Conflicting Interests. With stronger organizations on both sides, employers and employees confronted each other with one-sided demands. Each side desired to dictate terms without any reference to the claims of the other. Employers insisted on settling the terms of employment with each individual workman, while labor organizations insisted on enforcing "union rules." A period of storm and stress usually followed this stage. When one side was exhausted it submitted to the terms offered by the other and a truce would be established; but no real basis for industrial peace was secured. Employers and employees were hardly conscious of the change which had transformed individual production into organized industry; and so they could not understand that industrial relations were changing from an individual to a collective basis; but hard-earned experience taught both sides that strikes and lockouts were disastrous ways of

settling difficulties and both were ready for overtures of peace. At this stage informal conferences usually took place between representatives of the two parties to the labor contract. Mutual concessions were made and a new basis for agreement found. Gradually these informal conferences developed into regular systematic joint conference systems and local collective bargaining was established.

Large Scale Production and the Recognition of Unions. With the development of large scale production and a corresponding development of labor organizations the local systems have in many cases been extended to cover competitive areas which are national in scope. The "recognition" of labor organizations in conferences, where the respective interests of employer and employee are approached in a business-like way and where each side is able to back up its claims with industrial arguments bids fair to decrease the number of conflicts in which one side or the other is obliged to yield to industrial force.

In the complex process of industrial growth there is a constant shifting of reciprocal rights and obligations in the employment relationship. The gradual adjustment to the more constant features of industry fixes a basis upon which the future conditions of employment are determined according to the strength and influence of the two parties to the agreement. The relations established from time to time tend to become customary and so fix a standard of reciprocal obligation. Eventually the rights recognized in industry are more firmly established through legal enactment and thus become part of a system by which future adjustments are conditioned.

The evolution of the law follows, though slowly, the evolution of industry. On a constantly changing basis of new rights and new obligations collective bargaining in the United States is developing with the growth of organized production. Therein lies a partial guarantee of a more equitable distribution.

APPENDIX 1

BOOT AND SHOE WORKERS' UNION

Union Stamp Contract

Agreement entered into this first day of April, 1900, by and between, shoe manufacturers, hereinafter known as the Employer, and the Boot and Shoe Workers' Union, with headquarters at 620 Atlantic Avenue, Boston, Mass., hereinafter known as the Union, witnesseth:

First. The Union agrees to furnish its Union Stamp to the Employer free of charge, to make no additional price for the use of the Stamp, to make no discrimination between the Employer and other firms, persons, or corporations who may enter into an agreement with the Union for the use of the Union Stamp, and to make all reasonable effort to advertise the Union Stamp, and to create a demand for the Union Stamped products of the Employer in common with other employers using the Union Stamp.

Second. In consideration of the foregoing valuable privileges, the Employer agrees to hire as shoe workers, only members of the Boot and Shoe Workers' Union in good standing, and further agrees not to retain any shoe worker in his employment after receiving notice from the Union that such shoe worker is objectionable to the Union, either on account of being in arrears for dues, or disobedience of Union Rules or Laws, or from any other cause.

Third. The Employer agrees that he will not cause or allow the Union Stamp to be placed on any goods not made in the factory for which the use of the Union Stamp was granted.

Fourth. It is mutually agreed that the Union will not cause or sanction any strike, and that the Employer will not lock out his employes while this agreement is in force. All questions of wages or conditions of labor which cannot be mutually agreed upon shall be submitted to the Mass. State Board of Arbitration, whose decision shall be final and binding upon the Employer, the Union, and the employes.

Fifth. The Union agrees to assist the Employer in procuring competent shoe workers to fill the places of any employes who refuse to abide by Section Four of this agreement, or who may withdraw or be expelled from the Boot and Shoe Workers' Union.

Sixth. The Employer agrees that the Union collectors working in

the factory shall not be hindered or obstructed in collecting dues of members working in the factory.

Seventh. The Employer agrees that the General President of the Union, or his deputy upon his written order, may visit the employes in the factory at any time.

Eighth. The Employer agrees that the Union is the lawful owner of the Union Stamp.

Ninth. The Union agrees that no person except the General President, or his deputy upon his written order, shall have the right to demand or receive the Union Stamp from the Employer.

Tenth. Should the Employer violate this agreement, he agrees to surrender the Union Stamp or Stamps in his possession to the General President or his deputy, upon the written order of the General President, and that the said General President, or his deputy, may take the said Stamp or Stamps wherever they may be, without being liable for damages or otherwise.

Eleventh. In case the said employer shall for any cause fail to deliver said Stamp or Stamps to the General President or his deputy, as provided in this agreement, the Employer shall be liable to the General President in the sum of two hundred (200) dollars, as liquidated damages, to be recovered by the General President, in an action of contract, brought in the name of the General President for the benefit of the Union, against the Employer.

Twelfth. This agreement shall remain in force until

Should either party desire to alter, amend or annul this agreement, it shall give a written notice thereof to the other party three months before expiration of the agreement; and if the parties fail to give such notice, the agreement shall be in force for another year, and so on from year to year, until such notice is given.

Thirteenth. In case the Employer shall cease to do business, or shall transfer its interests, or any part thereof, to any person or persons, or corporations, this agreement shall be ended and the Stamp or Stamps shall be returned to the General President forthwith, without demand from the Union, when a new agreement of similar tenor as this may be entered into.

Signed,

By, ——— ———,
For the Employer.

By, ——— ———,
For the Union.

Blank form of Contract
The Union Boot and Shoe Worker,
April, 1900, Vol. 1. No. 4, p. 5.

APPENDIX 2

BUILDING CONTRACTORS' COUNCIL OF CHICAGO

Office of Secretary. 92 La Salle Street.
CHICAGO, April 30th, 1900.

To Whom It May Concern:—

In view of the suggestions made by many citizens, we are willing to amend our position, so that any organization affiliated with the Building Contractors' Council is at liberty to make an agreement with the individual union of its trade, provided:

1st. That the agreement is not contrary in any way to the following principles, unanimously adopted by the Building Contractors' Council at a meeting held on the 24th day of April, 1900, and for the maintenance of which the organization stands pledged.

(a) That there shall be no limitation as to the amount of work a man shall perform during his working day.

(b) That there shall be no restriction of the use of machinery or tools.

(c) That there shall be no restriction of the use of any manufactured material except prison-made.

(d) That no person shall have the right to interfere with the workmen during working hours.

(e) That the use of apprentices shall not be prohibited.

(f) That the foreman shall be the agent of the employer.

(g) That all workmen are at liberty to work for whoever they see fit.

(h) That employers shall be at liberty to employ and discharge whoever they see fit.

2nd. That the following conditions are made a part of the agreement:

(a) That eight hours shall constitute a day's work.

(b) That the rate of wages shall be:

$4.00 for Bricklayers.	$3.50 for Marble Setters.
4.00 for Plumbers.	3.40 for Sheet Metal Workers.
4.00 for Stone Cutters.	3.40 for Carpenters.
4.00 for Gas Fitters.	3.28 for House Drainers.
4.00 for Steam Fitters.	3.20 for Iron Workers.
4.00 for Plasterers.	3.00 for Painters.
4.00 for Engineers.	3.00 for Gravel Roofers.
4.00 for Tile Setters.	2.40 for Plasterers' Laborers.
3.60 for Iron Setters.	2.00 for Laborers.

(c) That time and one-half shall be paid for overtime, and double time for Sunday and holidays.

(d) That the agreement shall cover a period of not less than three years.

(e) That an arbitration clause, to provide for the adjustment of possible difficulties in the future, be made a part of the agreement.

(f) That no by-laws or rules conflicting with the agreement shall be enforced or passed by the association or union during the life of the agreement.

(g) That the agreement shall only become operative when the union withdraws permanently from the Building Trades Council, and agrees not to become affiliated with any organization of a like character during the life of the agreement.

The foregoing principles are fundamental for the peace and prosperity of any community or trade, and should be upheld by workman, owner, material man, architect, contractor and every citizen.

APPENDIX 3

THE CARPENTERS AND BUILDERS' ASSOCIATION OF CHICAGO, THE MASTER CARPENTERS' ASSOCIATION AND THE CARPENTERS' EXECUTIVE COUNCIL

Articles of agreement between the Carpenters and Builders Association, the Master Carpenters Association and the Carpenters Executive Council of Chicago and Cook County. In effect from March 11, 1901 to April 1, 1903.

I. This agreement made this seventh day of February, 1901, by and between the Carpenters' and Builders' Association of Chicago, and the Master Carpenters' Association of Chicago (employers), parties of the first part, and the Carpenters' Executive Council, party of the second part, for the purpose of preventing strikes and lockouts and facilitating a peaceful adjustment of all grievances and disputes which may, from time to time, arise between the employer and mechanics in the carpenter trade.

II. NO OUTSIDE INTERFERENCE.

WITNESSETH, That all the parties to this agreement hereby covenant and agree that they will not tolerate nor recognize any right of any

other Association, Union, Council or body of men, not directly parties hereto, to interfere in any way with the carrying out of this agreement, and that they will use all lawful means to compel their members to comply with the arbitration agreement and working rules as jointly agreed upon and adopted.

III. PRINCIPLES UPON WHICH THIS AGREEMENT IS BASED.

All the parties hereto this day hereby adopt the following principles as an absolute basis for the joint working rules, and to govern the action of the Joint Arbitration Board as hereinafter provided for:

1. That there shall be no limitation as to the amount of work a man shall perform during his working day.
2. That there shall be no restriction of the use of machinery or tools.
3. That there shall be no restriction of the use of any manufactured material, except prison-made.
4. That no person shall have the right to interfere with the working man during working hours.
5. That the use of apprentices shall not be prohibited.
6. That the foreman shall be the agent of the employer.
7. That all workmen are at liberty to work for whomsoever they see fit.
8. That all employers are at liberty to employ and discharge whomsoever they see fit.

IV. HOURS.

Eight hours shall constitute a day's work, except on Saturdays, when work shall stop at twelve o'clock noon, with four hours pay for the day.

V. OVERTIME.

Time and one-half shall be paid for overtime. Work done between the hours of 5 p. m. and 8 a. m. shall be paid for as overtime, when only one shift of men are employed on the job.

VI. HOLIDAYS.

Double time shall be paid for work done on Sundays throughout the year and on Saturday afternoons, also for work done on the following five holidays for days celebrated as such; Decoration day, Fourth of July, Thanksgiving day, Christmas day and New Years day. Sunday

shall perform his duties as steward so as not to interfere with his duty to his employer.

He shall always while at work carry a copy of the working rules with him.

XVI. APPRENTICES.

Each employer shall have the right to teach his trade to apprentices, and the said apprentices shall serve for a period of not less than three years, as prescribed in the apprentice rules to be agreed upon by the Joint Arbitration Board and shall be subject to control of the said Joint Arbitration Board. No apprentice shall be over 21 years of age.

XVII. ARBITRATION.

All the parties hereto agree that any and all disputes between any member or members of the Employers' Association on the one side, and any member or members of the Union on the other side, during the life of this agreement, shall be settled by arbitration in the manner hereinafter provided for, and for that purpose all parties hereto agree that they will at their annual election of each year, elect an Arbitration Committee to serve one year (except the Carpenters' and Builders' Association), (see section 3 of article 6 of their constitution), and until their successors are elected and qualified.

In case of death, explusion, removal or disqualification of a member or members on the Arbitration Committee, such vacancy shall be filled by the Association or Union at its next regular meeting.

The Arbitration Committee of each of the three parties hereto shall consist as follows: Five members from the Carpenters' and Builders' Association, three from the Master Carpenters' Association, and five from the Carpenters' Executive Council, and they shall meet not later than the fourth Thursday of January, each year, in joint session, when they shall organize a Joint Arbitration Board by electing a president, secretary, treasurer and umpire.

The Joint Arbitration Board shall have full power to enforce this agreement, entered into between the parties hereto, and to make and enforce all lawful working rules governing both parties. No strikes, lockouts, or stoppage of work shall be resorted to pending the decision of the Joint Arbitration Board. When a dispute or grievance arises between a journeyman and employer (parties hereto), or an apprentice and his employer, the question at issue shall be submitted in writing to the presidents of the two organizations, and upon their failure

to agree and settle it, or if one party to the dispute is dissatisfied with the decision, it shall then be submitted to the Joint Arbitration Board at their next regular meeting. If the Joint Arbitration Board is unable to agree the umpire shall be requested to sit with them, and after he has heard the evidence, cast the deciding vote. All verdicts shall be decided by majority vote, by secret ballot, be rendered in writing, and be final and binding on all the parties to the dispute.

XVIII. WHO ARE DISQUALIFIED TO SERVE ON ARBITRATION COMMITTEE.

No member who is not actively engaged in the trade, or who holds a public office, either elective or appointive, under municipal, county, state or national government shall be eligible to sit as the representative in this trade arbitration board, and any member shall become disqualified to sit as a member of this trade Joint Arbitration Board and cease to be a member thereof immediately upon his election or appointment to any public office or employment.

XIX. UMPIRE.

An umpire shall be selected who is in no wise affiliated or identified with the building industry, and who is not an employe or employer of labor nor an incumbent of a political office.

XX. MEETINGS.

The Joint Arbitration Board shall meet to transact routine business the first Thursday in each month, but special meetings shall be called on three days' notice by the presidents of the two organizations or upon application of three members of the Joint Arbitration Board.

XXI. FINES FOR NON-ATTENDANCE AS WITNESS.

The Joint Arbitration Board has the right to summon any member or members affiliated with any of the parties hereto against whom complaints are lodged for breaking this agreement or working rules, and also appear as witness. The summons shall be handed to the president of the Association or Union to which the members belong, and he shall cause the member or members to be notified to appear before the Joint Arbitration Board on date set. Failure to appear when notified, except (in the opinion of the Board) valid excuse is given, shall subject a member to a fine of twenty-five ($25) dollars for the first offense, fifty ($50) dollars for the second, and suspension for the third.

XXII. SALARIES.

The salary of each representative on the Joint Arbitration Board shall be paid by the Association or Union he represents.

XXIII. QUORUM.

Seven (7) members present shall constitute a quorum in the Joint Arbitration Board.

If one or more of the members of the Arbitration Committee of either of the parties to the agreement be absent, the other Arbitration Committee shall cast an equal number of votes on a division in the Joint Arbitration Board.

XXIV. FINES AS A RESULT OF ARBITRATION.

Any member or members affiliated with either of the three parties hereto violating any part of this agreement or working rules established by the Joint Arbitration Board shall be subject to a fine of from ten ($10) dollars to two hundred ($200) dollars, which fine shall be collected by the President of the Association or Union to which the offending member or members belong, and by him paid to the treasurer of the Joint Arbitration Board not later than thirty (30) days after the date of the levying of the fine.

If the fine is not paid by the offender or offenders it shall be paid out of the treasury of the Association or Union of which the offender or offenders were members at the time the fine was levied against him or them and within sixty (60) days of date of levying same; or in lieu thereof the Association or Union to which he or they belong shall suspend the offender or offenders and officially certify such suspension to the Joint Arbitration Board within sixty (60) days from the time of fining, and the Joint Arbitration Board shall cause the suspension decree to be read by the presidents of both the Associations and Union at their next regular meeting, and then post said decree for sixty (60) days in the meeting rooms of the Association and Union. No one who has been suspended from membership in the Association or Union for neglect or refusal to abide by the decisions of the Joint Arbitration Board can be again admitted to membership except by paying his fine or by unanimous consent of the Joint Arbitration Board.

All fines assessed by the Joint Arbitration Board and collected during the year shall be equally divided between the two parties hereto, by the Joint Arbitration Board, at the last regular meeting in December.

XXV. RULES FOR ARBITRATION BOARD AND FOR PARTIES HERETO.

All disputes arbitrated under this agreement must be settled by the Joint Arbitration Board, and in conformity with the principles and agreements herein contained, and nothing herein can be changed by the Joint Arbitration Board. No by-laws or rules conflicting with this agreement or working rules agreed upon shall be passed or enforced by either parties hereto against any of its affiliated members in good standing.

XXVI. TERMINATION.

It is agreed by the parties hereto that this agreement shall be in force between the parties hereto until April 1, 1903.

XXVII. WITHDRAWAL FROM THE BUILDING TRADES COUNCIL.

This agreement shall become operative when the Union withdraws permanently from the Building Trades Council. It being understood and agreed that after so doing affiliation with a new central body, composed solely of mechanic trades employed on buildings, will in no way affect the terms of this agreement, provided that the constitution, by-laws and rules of such central body are not in conflict at any time with the terms of this agreement and that the said central body shall not be called "The Building Trades Council".

On behalf of the parties of the first part.

THE CARPENTERS' AND BUILDERS' ASSOCIATION OF CHICAGO.

Abraham Edmunds,
Joseph Haigh,
William Adams,
John A. Wiseman,
Charles W. Gindele.

THE MASTER CARPENTERS' ASSOCIATION.

Louis A. Ashbeck,
H. Cohlgraff,
B. C. Ellish.

On behalf of the party of the second part.

THE CARPENTERS' EXECUTIVE COUNCIL.

Timothy Cruise,
J. W. Quayle,
P. F. Duffy,
A. W. Simpson,
Wm. L. Glass.

APPENDIX 4

STANDING RULES OF THE GRAND INTERNATIONAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Section 1. On any system of railroad where two or more subdivisions are organized, there shall be a standing general committee of adjustment, whose members shall be elected biennially at the regular election of officers of subdivisions. Only those members of a division whose grievances he might be required to adjust shall be entitled to a vote for member of general committee of adjustment.

On any line or system of railroad under or controlled by one president, or by an executive board under whom are one or more presidents or general managers, where a road or branch constitutes a separate department of the system, and on which the Brotherhood of Locomotive Engineers have separate and distinct schedules of pay, there may be on each such line a standing board of adjustment, composed of a delegate from each subdivision located upon that line or distinct part of the system; such delegate shall be the chairman of the local committee of his division, and these delegates shall meet biennially and select a chairman and secretary, and transact such other business as may be referred to them by subdivisions on their distinct and separate part of the system to which they belong. On these composite systems there shall be an executive board of adjusment, composed of the chairman of each general committee of adjustment of the separate lines or branches comprising the system, which shall meet biennially or annually, as they may decide, elect a chairman and secretary, and such other business as may be referred to them by the general committees of adjustment of the different lines. These committees to be governed by the law of the G. I. B. of L. E.

Sec. 2. Each subdivision on said system shall be entitled to one representative and one vote in said committee. Provided, that on systems whereon are located but two subdivisions, the subdivisions having the most members employed on such systems shall have two representatives and two votes in the committee named.

Sec. 3. It shall be the duty of the general committee of adjustment of each system to meet biennially at such time and place as may be

determined by a majority of its members and adjust the grievances on the system, if any exist.

Sec. 4. The chairmen and secretaries of general committees of adjustment shall be elected at the opening of each biennial session.

Sec. 5. The chairman may be elected from any subdivision on the system, even though not a delegate to the committee.

Sec. 6. The chairman of the general committee of adjustment may be made a salaried officer, provided two-thirds of the members on the system so elect.

Sec. 7. A salaried chairman shall devote his whole time to the interests of the members on his system, visit their subdivisions, exemplify the work, and give all necessary instruction. The salaries of such chairman shall be raised by an equal assessment on all members employed on the system represented, and shall be collected three months in advance and paid monthly.

Sec. 8. Any chairman of a general committee of adjustment, when called upon by one or more subdivisions on his system, shall be empowered, in conjunction with local committees, to adjust, if possible, all differences that may rise between members and their employers without convening the general committee of adjustment, and in case the local committee cannot be convened readily, the chairman shall have power to select one or more members to assist him. If unsalaried, his pay for such service shall be raised by an equal assessment on all members who are employed on said system. General committee of adjustment shall make such assessment as is deemed necessary, to be paid quarterly in advance to the general secretary and treasurer, who will pay the general chairman for his services, and any surplus in the treasury after payment of salaried chairman shall be applied to expenses of general committee when called in session.

Sec. 9. It shall be the duty of the chairman of the general committee of adjustment of each system to act as committee on transportation for delegates to the G. I. B. of L. E. immediately after each election of officers, and report the result to the grand office. Provided, that where it is not advisable for the chairman to act in person, he may appoint some members of his system to act in his stead.

Sec. 10. At any time between biennial sessions, should a majority of the subdivisions on a system instruct the chairman to convene the general committee of adjustment, he shall do so without delay.

In case of an emergency, the chairman is empowered to convene the committee, when, in his judgment, it is absolutely necessary.

Any action taken by a general committee of adjustment on any system shall stand as law for all members and subdivisions on said system,

until repealed by said committee or by a two-thirds vote of the members on the system.

An appeal may be taken from the decision of the general committee of adjustment or the chairman to the members on the system, if made within ninety days from the date of such decision, and a two-thirds majority vote of members on said system shall be final. This vote to be taken in the same manner as in the election of division officers.

Sec. 11. Any member refusing to sustain the action or to carry out the instruction of the general committee of adjustment of the system on which he is employed shall, upon conviction by his subdivision, be expelled for violation of obligation.

Any member who, by verbal or written communication to railroad officials or others, interferes with a grievance that is in the hands of a committee, or at any other time makes any suggestion to any official that may cause discord in any division, shall be expelled when proven guilty.

Sec. 12. Should a subdivision on any system refuse to sustain an action of the general committee of adjustment of said system, or to enforce the laws passed by the G. I. B. of L. E., it shall be the duty of the member of said committee from such subdivision to make a written statement of the facts concerning such refusal to the chairman of said committee, who shall submit the same to the G. C. E., and if in the judgment of the G. C. E. such subdivision is at fault, he shall at once suspend its charter.

Sec. 13. It shall be the duty of the general committee of adjustment on any system to exhaust its efforts to effect a settlement of any difficulty that may arise on said system between the management of the system and members of the Brotherhood of Locomotive Engineers before sending for the G. C. E. Failing, they shall notify the G. C. E. of the facts in detail and may call upon him for assistance.

Sec. 14. Receiving such call, the G. C. E. shall give it precedence over all other business. Shall at once visit such system and use all honorable means to prevent trouble between members and their employers. When it becomes necessary to defend any of our existing agreements between members of the Brotherhood of Locomotive Engineers and railway companies in the hands of the court, the grand chief, in conjunction with the general committee of adjustment, may employ a competent attorney to defend our interests, and the expense shall be paid from the treasury of the Brotherhood.

Sec. 15. The expenses of members of a general committee of adjustment when convened for any purpose, together with pay for time they lose in such service, shall be raised by an equal assessment on all mem-

bers of the Brotherhood of Locomotive Engineers employed on the system represented. The secretary of the general committee of adjustment shall furnish all divisions on the system a copy of the minutes of the meeting of said committee.

All assessments levied by the general committee of adjustment shall be paid within sixty days after the date of notice, and any division not square on the books of the secretary and treasurer of the G. C. of A. at their annual or biennial meetings, their delegates will not be entitled to a seat.

The chairman of the general committee of adjustment shall, or any division may, prefer charges against any division failing to pay their G. C. A. assessments within sixty days to the grand chief engineer, who shall investigate said charges, and if no reasonable excuse is found, such division shall have their charter suspended until they pay said assessments.

Each division will furnish a credential to their member of general committee of adjustment, and it shall state the number of assessable members. Divisions will pay for the number of members stated on the credential. Divisions will be responsible to their member of general committee of adjustment for his pay for serving on said committee.

The bill for amount due to any member of a subdivision for serving on such general committee shall, when regularly presented and accepted, be paid, if possible, without delay, from the general fund of the subdivision, and said amount, when so paid, shall be again restored to said fund as soon as collected by assessment, as per this article.

All general committees of adjustment shall have power to fix the rate of pay for members serving on such committee.

When the general committee of any system is called on duty to attend to affairs of a general nature, the time and expenses of said committee shall be paid from the general fund of the G. I. B. of L. E., provided the call comes from the grand executive officers in authority.

No new business will be entertained by a general committee of adjustment unless sent under the seal of a subdivision, and no resolution that has for its purpose the changing of existing rights to runs as understood by engineers will be entertained by any committee of adjustment until it has been first submitted to all divisions interested, they to vote on the question and send their member to the G. C. of A. instructed how to vote. In case any matter pertaining to the welfare of the Brotherhood should come to the notice of the G. C. E., he shall have power to call a committee of two or more members, and they may make any arrangement or agreement they may deem best for the in-

terest of the Brotherhood, and all expenses incurred shall be paid out of the general treasury.

Sec. 16. Should any member in the employ of a railroad company, while in discharge of his duty as a locomotive engineer, meet with any accident of any kind, he shall be required to make out a complete and true report of the same to his division, in writing, for the benefit of the committee of adjustment, and the division shall keep such report, together with a copy of the judgment of the company's officials concerning such accident. Failing to do so he shall not have his case handled by the general chairman unless so ordered by a two-thirds vote of his division. Should an engineer wilfully misrepresent facts in his statement for the guidance and information of the committee, he shall be considered as having violated his obligation, and on conviction at a regular trial shall be suspended or expelled, as the division may determine.

Sec. 17. Members are prohibited from signing any contract with a railroad company, or making any verbal agreement, without the consent of the general committee of adjustment of the system by which they are employed.

Sec. 18. It shall be illegal for the chairman of any general or local committee of adjustment to meet with or go before the general manager, superintendent, or master mechanic of any railway, road, or system for the purpose of adjusting any grievance, or making or giving consent to any contract, without first consulting with other members of the general or local committee of adjustment; and said chairman shall be accompanied by one or more members of said general or local committee whenever he visits the general manager, superintendent or master mechanic to adjust the grievances of the members of the road by which he is employed. When engineers of any railroad are using joint tracks on foreign roads, and through the movement of such engines the engineer is charged with any offense that would cause his dismissal or in any way affect his welfare, upon request of the division of which he is a member, the division located on the railroad or tracks of such foreign railroad shall, upon proper notification, take up such grievances and adjust the same in the same manner as if it were a grievance of their own member, and at the expense of the division making such request.

APPENDIX 5

RULES RELATING TO LOCOMOTIVE FIREMEN ON THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY

Provisionally Effective September 1, 1902.

ARTICLE ONE.

No fireman shall be dismissed or suspended from the service of the company without just cause.

ARTICLE TWO.

In case a fireman believes his discharge or suspension to have been unjust he shall make written statement of the facts in the premises and submit it to his Master Mechanic; and at the same time designate any other fireman in the employ of the company at the time on the same division, and the Master Mechanic, together with the fireman last referred to, shall, in conjunction with the Superintendent or some other superior officer, investigate the case in question. When at all practicable, such investigation shall be made within five days from the date of the receipt of the communication from the fireman, and in case the aforesaid discharge or suspension is decided to have been unjust, he shall be reinstated and paid half time for all time lost on said account.

ARTICLE THREE.

The right of appeal in proper order from Local to General officers is always conceded.

ARTICLE FOUR.

No attention will be paid to grievances, unless presented in writing within sixty days after their occurrence.

ARTICLE FIVE.

All charges or reports against firemen shall be made in writing, and such charges shall be subject to the inspection of the party against whom they are made.

ARTICLE SIX.

When not otherwise required by the Company's necessities, all freight firemen shall run first in and first out (except those assigned to regular runs) from all terminals and relay stations in their respective districts.

ARTICLE SEVEN.

All firemen on extra lists shall register, on their arrival, in a book provided for that purpose, and shall be called in rotation when the services of an extra man may be required, and shall remain with the engine called for until the regular fireman returns, except where a preferred extra passenger list is maintained.

ARTICLE EIGHT.

Where a preferred extra passenger list is not maintained and a vacancy occurs in passenger service, the best available man will be put on the engine; the senior freight fireman to be put on the engine as soon as possible, if the vacancy is for fifteen days or more.

ARTICLE NINE.

The rights and preferences to runs, engines and promotions shall be governed by seniority, and the choice of runs and engines shall be based upon this principle, it being understood that the choice of engines shall not apply to engines of the same class. The same rule will apply to firemen in yard service. When consistent to do so, and a deficiency of firemen in road service exists, firemen in yard service will be considered in the line of promotion to road service firemen.

ARTICLE TEN.

Firemen shall be promoted according to seniority. Failing to pass examination (Mechanical or Time-Card), a fireman shall forfeit the right to promotion for six months. Failing to pass examination a second time, he shall lose his run and take the position of junior fireman on the regular list. Failing to pass examination a third time, he shall resign.

ARTICLE ELEVEN.

Firemen will have rights on their respective divisions as they are now divided.

ARTICLE TWELVE.

Firemen will be called for all runs not less than one hour, nor more than one hour and a half, before leaving time. The caller will be provided with a book, showing time and for what train wanted, in which the fireman will sign his name and time called. Firemen living more than one mile from roundhouse will not be called.

ARTICLE THIRTEEN.

Firemen called to make a trip, provided the train is afterward annulled and fireman released, shall be paid for three hours' time on the basis of the regular rates which they are receiving, and shall occupy the same position as before being ordered out.

ARTICLE FOURTEEN.

The time of a fireman shall begin from the time for which the train is ordered, as shown on the order for calling, and shall continue to the time the engine is given to the hostler at the end of the run.

ARTICLE FIFTEEN.

When road firemen are required to switch at terminals thirty-five minutes or more, time shall be allowed.

ARTICLE SIXTEEN.

Delayed time at terminal stations before leaving will be paid for full delay if delayed one hour; if delayed thirty minutes at terminal stations after arriving, one hour's time will be allowed. In computing delayed time before leaving it is understood that one full hour must be consumed before time will be allowed. If one hour and thirty minutes, two hours time will be allowed, and so on. After arriving at terminal station one hour will be allowed after thirty minutes' delay, two hours after one hour and thirty minutes' delay, and so on.

ARTICLE SEVENTEEN.

In road service extra or overtime will not be allowed for terminal switching delays at terminal stations, or delays between terminals (see Articles 15, 16 and 23) except such as may be in excess either of one day of ten hours or one hundred miles.

ARTICLE EIGHTEEN.

The time of firemen in freight or passenger service shall be computed on the basis of one hundred miles or less for a day's work; and all time made by firemen while on the road between terminal points, in excess of ten miles per hour on freight, or eight hours per hundred miles on passenger, shall be considered overtime.

ARTICLE NINETEEN.

When firemen are held in for snow-plow service, they will be allowed regular pay for each day of twenty-four hours that they are so held subject to orders.

In case a regular fireman's engine is assigned, in reserve, to snow-plow service, the fireman shall be provided with another engine.

ARTICLE TWENTY.

When good cause can be shown for doubling hills, the pay shall be on the basis of the actual time lost—actual time to be computed from the time of stalling until the train is again coupled at the summit.

ARTICLE TWENTY-ONE.

Freight firemen double-heading on passenger trains will receive passenger firemen's pay for the same.

ARTICLE TWENTY-TWO.

Firemen dead heading on Company's business will be paid half mileage.

ARTICLE TWENTY-THREE.

When required by this Company to attend court, firemen shall be paid at the rate of $2.25 per day of twenty-four hours and their expenses during attendance, and for all time lost while awaiting the Company's orders, and for such time as they may lose while waiting to take their runs, and for all services not otherwise provided for in this schedule.

ARTICLE TWENTY-FOUR.

All construction service performed at terminal points by road firemen not regularly assigned to construction will be paid for at the reg-

ular rates. If more than five hours are consumed in this service, the fireman will not be considered first out in any class of service except construction. Road firemen required to do construction work between terminals will be paid actual mileage for miles run on freight or passenger, and construction pay for such construction service at the established rate for fractions of a day on construction.

ARTICLE TWENTY-FIVE.

The Company will furnish blank forms for engineers to fill out for all delayed time between terminals and at terminals before departing and after arriving, which shall be verified by the train sheet, and certified to by the Division Superintendent.

ARTICLE TWENTY-SIX.

Firemen required to watch engines will be paid their regular rate per hour, as firemen, for such service, regardless of other time or mileage earned that day.

ARTICLE TWENTY-SEVEN.

Switch firemen will be allowed one full hour for dinner between 11 o'clock A. M. and 1 o'clock P. M. Should necessity of business prevent the use of the hour assigned, the fireman shall be paid overtime for it at the rate per hour regularly received by him.

The same rule will apply to night men between the hours of 11 o'clock P. M. and 1 o'clock A. M.

ARTICLE TWENTY-EIGHT.

Firemen shall not be required to clean fires, ash pans, or front ends of their engines at terminals of their respective runs, or at points where there is a round house, provided that the run of the engine to be cleaned covers a mileage of not less than one hundred and fifty miles.

ARTICLE TWENTY-NINE.

Firemen will not be required to do any cleaning outside of cab on the following classes of engines:

1200 (new series number 2000)
1300 (" " " 1000)
1400
1500 (new series number 1800)

On the Kansas Division between Horton, Herington and Armourdale, engines in the 800 class (new series number 1300) are included in the above exemption. Firemen will do all cleaning inside

of cab and clean windows outside on the engines specified in this Article and will continue to clean other engines as heretofore except as specified in Article Thirty. When the engines specified in this article are so located that cleaning cannot be properly taken care of by the Company, firemen will be required to do such cleaning as will prevent damage.

ARTICLE THIRTY.

Firemen will not be required to blacken smoke-boxes, stacks or front ends on any class of engines which run into Division Terminals.

ARTICLE THIRTY-ONE.

No fireman shall be required to continue on duty when he reasonably needs rest, he to be the judge; but in extreme cases the firemen on their part will tender every means in their power to assist the company; it being understood that trains shall not be unreasonably tied up between terminals, and that due notice shall be given when rest is required, if possible to do so.

ARTICLE THIRTY-TWO.

Coal for all main line and switch engines shall be broken, suitable for furnace use.

ARTICLE THIRTY-THREE.

Firemen will not be required to coal engines between terminals where chutes are not provided.

ARTICLE THIRTY-FOUR.

There shall be no objection to the transfer of a fireman from another division, provided the supply of firemen on the division requiring additional engineers does not meet the necessities, and good, competent men on other divisions are desirous of such transfer.

ARTICLE THIRTY-FIVE.

Firemen on assigned runs will stay on their run regardless of engine furnished.

When a chain gang engine goes into shop for general repairs, its fireman will take the engine of the junior fireman in chain gang service and it will be considered his regular engine.

ARTICLE THIRTY-SIX.

In case of a surplus of firemen, the junior men in the service shall be taken off and shall do extra work or firing. A surplus shall not be considered as existing while firemen are making 2,600 miles per month.

ARTICLE THIRTY-SEVEN.

On application a copy of the revised seniority lists of firemen shall be furnished.

ARTICLE THIRTY-EIGHT.

When a run becames vacant, it shall immediately be bulletined and a fireman assigned as soon as possible thereafter.

ARTICLE THIRTY-NINE.

Firemen on standard 8-wheel locomotives will receive two and twenty-five hundredths (2 25-100) cents per mile; on moguls and local runs they will receive two and forty-hundredths (2 40–100) cents per mile; on 10-wheel engines they will receive two and fifty hundredths (2 50–100) cents per mile. Firemen of construction trains will receive one hundred miles per day as per schedule. In construction service, twelve working hours or less will constitute a day's work.

ARTICLE FORTY.

Firemen on suburban trains between Chicago and Blue Island shall receive twenty-one (21) cents per hour while on duty.

ARTICLE FORTY-ONE.

Firemen of switch engines shall receive one dollar and seventy-five cents ($1.75) per day; it being understood that in switching service ten working hours shall constitute a day's work; five hours or less a half day; over five hours a full day.

ARTICLE FORTY-TWO.

Overtime will be allowed in switching service at the rate of seventeen and one-half (17 50–100) cents per hour, and in all other service at the rate of twenty-two and one-half (22 50–100) cents per hour, irrespective of classification.

ARTICLE FORTY-THREE.

After final investigation, firemen will be notified when time is not allowed, as per time reports, and reasons will be given for not allowing same.

ARTICLE FORTY-FOUR.

Firemen leaving the service of this Company shall be given a service letter.

ARTICLE FORTY-FIVE.

All bulletins concerning firemen shall be posted in engine house.

ARTICLE FORTY-SIX.

Evidence of the willingness of a fireman to serve the best interests of the Company at all times, in whatever capacity assigned, as well as economy and cleanliness in the care of his engine and the Company's property under his control will always be considered as meriting reward.

All rules previously in effect are by this agreement abolished.

The articles enumerated above, constitute, in their entirety, the agreement between this Company and its locomotive firemen for a term of five years from September 1, 1902, and shall not thereafter be changed unless thirty days' notice has been served upon the other party.

PROVIDED that these rules shall not become effective until at least seventy-five per cent of the total number of Firemen in the service on August 1st, 1902, have signified their acceptance of the rules by attaching their signatures thereto, and further

PROVIDED that any person accepting the position of fireman during the life of these rules shall signify his acceptance of them by attaching his signature thereto. These rules do not apply to the Firemen paid and governed by the rules of the B. C. R. & N. Railway until such time as the rules of the C. R. I. & P. Ry. relating to firemen become effective in the Northern District.

FOR THE CHICAGO, ROCK ISLAND & PACIFIC RY.

Geo. F. Wilson,
Supt. Motive Power.
C. A. Goodnow,
General Manager.

FOR THE FIREMEN.

J. M. McQUADE,
Chairman.

George F. Phillips,
A. R. Cannady,
T. P. Lindsey,
F. T. Anderson,
R. S. Boynton,
R. Vass,

H. P. Arnold,
W. S. Coppers,
M. Peterson,
G. E. Seiler,
L. E. Hardesty,
G. S. Sutton,
Committee.

APPENDIX 6

INTERNATIONAL ASSOCIATION OF MACHINISTS AND THE FRISCO SYSTEM

AGREEMENT

Entered into by and between the Frisco System and all lines pertaining thereto, and the International Association of Machinists and Apprentices at Springfield, Missouri, Feb. 1, 1902.

ARTICLE I.

Sec. 1. A standard working day shall be ten (10) hours.

Sec. 2. All time in excess of ten (10) hours per day, Sundays and Legal Holidays (New Years, Fourth of July, Labor Day, Thanksgiving, and Christmas) shall be paid for at rate of time and one-half.

Sec. 3. Should a machinist or Apprentice be sent out on the road he will be allowed straight pay from time he is called until he returns, and one dollar per day, expenses for each twenty-four hours. If out more than thirty-six hours, and given time for rest, shop rules will apply, covering overtime; in addition, one dollar for each twenty-four hours will be allowed.

ARTICLE II.

Sec. 1. Should it become necessary to reduce expenses, all conditions being equal, the best men will be retained, and preference given to those that have others dependent on them for support. As to working hours, conditions existing at time reductions are being made will govern.

ARTICLE III.

Sec. 1. All Machinists employed at present (February 1, 1902) shall receive the schedule rate of pay (30 cents per hour) beginning February 1, 1902. All new men hired shall be paid not less than 29 cents per hour, and if at the end of three months he is found to be competent he shall receive the schedule rate of pay (30 cents per hour).

ARTICLE IV.

Sec. 1. One Apprentice may be employed for the shop and thereafter one for every four (4) Machinists employed. This rate not to affect apprentices already employed.

Sec. 2. All Apprentices will serve a term of four (4) years at the Machinists trade, and will be furnished with service papers at the expiration of apprenticeship. The rate of pay to be as follows: For the first year, 8 cents per hour; for the second year, 10 cents per hour; for the third year, 15 cents per hour; for the fourth year, 22 cents per hour; and at the expiration of four years and six months, 27 cents per hour; and if retained in the Company's service at the end of five (5) years shall receive the schedule rate of pay (30 cents per hour).

Sec. 3. An Apprentice, after serving one (1) year, if in the opinion of the foreman of the department, he shows no aptitude to acquire the trade, he shall be transferred or dismissed, and all obligations accepted by this Company by reason of this schedule will of necessity be forfeited.

ARTICLE V.

Sec. 1. Machinists shall be considered in line for promotion.

ARTICLE VI.

Sec. 1. Machinists will enjoy the same privileges in regard to free transportation upon the Company's own lines as other employes and their families.

ARTICLE VII.

Sec. 1. A first-class Machinist must be either capable of operating to an advantage all important machines, or competent on floor or vise work. If an expert on a specialty such as building and maintaining in a workmanlike manner the important details that make up air brake apparatus as applied to locomotives he shall be classed as a Machinist.

ARTICLE VIII.

Sec. 1. Helpers or laborers will not be advanced to the detriment of Machinists or Apprentices, but will continue as in the past on such rough work as repairs of steam pipes, truck work, spring and rigging.

ARTICLE IX.

Sec. 1. The Company will not in any way discriminate against any Machinist who, from time to time, represents either Machinists on committee of investigation or other committees duly authorized to see the

management, but insist on such matters being presented in proper manner to foreman in charge; if satisfactory understanding cannot be arrived at, then present in writing the question at issue to general foreman or division foreman, and if it is a question they are not at liberty to decide, the matter will be forwarded to the office of Superintendent of Machinery, who will reply to same through the office of person in charge or arrange to meet committee.

ARTICLE X.

The foregoing Articles and Sections shall be known as the Frisco System and all lines pertaining thereto, and the International Association of Machinists Schedule and Rules, and will not be abrogated or annulled without thirty (30) days' notice by the interested parties or until a new Schedule or set of Rules is adopted satisfactory to all parties concerned, and said Schedule shall take effect not later than February 1, 1902, and will be in effect for one (1) year.

SPRINGFIELD, MO., Feb. 24, 1902.

Mr. J. F. Goldsmith and Committee,
Representing International Order of Machinists,
Springfield, Mo.

Gentlemen:—Your letter of February 22nd, advising me that the understanding we arrived at relative to the Rules, Regulations and Wages governing Machinists engaged by the Frisco Company at Springfield, were satisfactory to the Committee and you desire that I should O. K. the same. This letter is for you to present to your Order notifying them of my acceptance as the Schedule presented, which contains modifications from the Schedule presented for January 1st, and differing very little from what we arrived at one year ago.

Yours respectfully,

GEO. A. HANCOCK,
Supt. of Machinery.

P. S. Rates to apply from February 1st.

APPENDIX 7

MICHIGAN MINING SCALE

1902.

1. Resolved, That from the time of its adoption this scale take effect and continue in effect until March 31st, 1903, entirely superseding and annulling all other scales and agreements for this district, and any new rules, either local or general, governing the scale or conditions of employments in this district shall be mutually agreed to by operator and miners interested, and said rules before being in force shall receive the endorsement of the Operators' Commissioner and officials of District No. 24, United Mine Workers of America.

2. Resolved, That for pick mining the following prices shall be paid:

	Per ton.
For 30 inches of coal and upwards	$ 86
For 27 inches of coal and less than 30 inches	91
For 24 inches of coal and less than 27 inches	96

For 2,000 pounds of coal to the ton, screened over a 7/8 diamond or flat bar screen, 14 feet in length, of 72 feet superficial area, sufficiently braced to keep bars in place.

3. Resolved, That the price of run of mine coal be determined on the actual percentage of screened coal at the mine producing the same, and that the same rules governing the cleaning of screened coal also apply to mine run.

4. Resolved, Should any miner persistently, carelessly or maliciously load slate or other impurities, he shall for the first offense be cautioned by notification, and for the second offense he shall be fined 50 cents, for the third and each subsequent offense occurring in any one month, he shall be fined $1.00, the amount of such fine to be paid into the miners' local treasury, providing that no miner shall be fined unless the weighman and checkweighman shall agree that the miner has not exercised proper care in cleaning the coal. In case they cannot agree, it shall be referrred to the mine committee and mine boss.

5. Resolved, That where one man cannot push his coal, the driver shall help him push his car out.

6. Resolved, That the question of car pushing by the company be deferred until the next annual joint convention, in order that operators may have time to thoroughly inform themselves by investigation in other districts and by experimental methods in this district regarding this matter.

7. Resolved, That the prices for narrow work and room turning be as follows:

Entries, per yard	$1.50
Entries, double shift, per yard	1.75
Break-throughs, between entries	1.50
Break-throughs between entries and rooms	1.50
Break-throughs between rooms and entries	1.30
Break-throughs between rooms	1.10
Room turning	3.20

8. Resolved, Where entries are wet or have exceptionally bad top, an additional price will be paid over and above the regular rate, the extra price to be determined by the miners interested and mine boss. In case they fail to agree, it shall be referred to the mine committee and the mine management.

9. Resolved, There shall be paid 6¼ cents per inch for slate and bottom in entries, and where bottom is shot more than five feet wide the same proportionate rates shall be paid for any additional width.

10. Resolved, That two cents per inch per lineal yard, five feet wide, be paid for all draw slate or foreign substances coming down and handled, to be removed by miner.

11. Resolved, That where substances met with in entries or rooms causing extra work or expense in drilling, shooting or breaking up such substances, an additional price shall be paid, as may be determined by miner and mine boss, and in case they fail to agree it shall be referred to the mine committee and mine management.

12. Resolved, That when a miner meets a fault or clay vein and fails to agree with mine boss upon a price for going through the same, he shall receive $2.60 per day and the company furnish supplies, and if he shall not perform his work to the satisfaction of the company, he shall be given another place and the company may employ another man.

13. Resolved, That where differentials have existed and have been removed by arbitration, the question of differentials shall not be considered during the life of this contract, and any new mines sunk shall have no differential imposed on them on account of their location.

Where differentials were paid at the close of the last scale year and it is desired to remove them by miners or operators interested, a committee of two shall be selected, as follows: One selected by miners,

and one selected by operators, and the two thus selected shall make a personal investigation of the physical condition of the mine, as well as the earning capacity of the miners, as ascertained from the pay rolls of the company. They shall investigate in the manner prescribed in as many mines where no differentials are paid as will enable them to determine as to the merits of the removal of the differential, and their decision shall be final for the scale year.

In case of failure to agree by the two thus selected, they shall select a disinterested person to act with them in the manner prescribed above, and a majority decision shall be binding upon all until the close of the scale year. Application for the removal of the differential to be made to the Miners' President and the Operators' Commissioner and shall receive immediate attention. It is understood that the President of the U. M. W. of A. and the Operators' Commissioner shall not be of the committee.

INSIDE DAY WAGE SCALE.

14. Resolved,That the wages of all day laborers inside the mine shall be as follows:

Track layers	$2.28
Track layers' helpers	2.10
Trappers	1.00
Bottom cagers	2.10
Driver	2.10
Trip riders	2.10
Water haulers	2.10
Timbermen, where such are employed	2.28
Company men in long wall mines	2.10
All other inside day labor	2.10

15. Resolved, That where miners are taken away from their work to perform day labor they shall receive $2.60 per day, except where they voluntarily accept a position as a day laborer.

16. Resolved, That eight hours shall constitute a day's work, and no person working in the mine shall perform more than eight hours' labor in twenty-four, and not more than six days of eight hours each in one week except in case of emergency, and whenever this privilege is abused by the manager, the mine committee shall stop it after consultation with the district officers of the U. M. W. of A. and the operator.

17. Resolved, That an eight hour day means eight hours labor in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such work-

ing places in the morning and departing from the same at night. Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall a driver's time be docked while he is waiting for such cars at the point named.

18. Resolved, That when the men go in the mine in the morning, they shall be entitled to two hours pay, whether or not the mine works the two full hours, but after the first two hours the men shall be paid for every hour thereafter by the hour for each hour's work or fractional part thereof. If for any reason the regular work cannot be furnished the inside day laborer for a portion of the first two hours, the operator will furnish other than the regular labor for the unexpired time.

OUTSIDE DAY WAGE SCALE.

19. Resolved, That engineers and firemen shall work eight hours, with the understanding that engineers shall hoist and lower the men exclusive of this time.

	Per day.
Dumpers	$2.10
Trimmers	2.10
Check Chasers	1.25
Engineer	2.50
Firemen	1.80
Blacksmith	2.50
All other outside labor when permanently employed	1.80
Carpenters when employed by the day to receive	2.40

But this shall not prevent carpenters accepting employment by the month.

Temporary employes shall be under the jurisdiction of the company, but they shall not take the place of permanent employes.

20. Resolved, That the schedule of day wages applies only to men employed in the performance of their labor, and is not applied to boys unless they can do and are employed to do a man's work.

21. Resolved, That where any members of the present force of outside day laborers in this field prefer to work in the mine in preference to accepting wages offered for their services as outside day laborers, they shall be given places in the mine to mine coal.

22. Resolved, That the company shall be required to make break-throughs every sixty feet and to stop all air leakages through the last break-through.

23. Resolved, That so far as possible two men be given two rooms, and the operators pledge themselves to provide two places for two men at the earliest possible moment.

24. Resolved, That the company shall be required to place end gates in all cars and furnish equipment to lift end gates clear of all dumpage and that for all cars broken, because of derailment or other accident, while in transit from working places to shaft, the miners shall receive for such broken cars the average weight of each day's output.

25. Resolved, That the company be required to have the water taken out of wet entries before the regular starting time, and out of rooms within one hour after starting time, and in event the water is not taken out at the above stated time, the miner shall bail the water, and he shall be paid for the same.

26. Resolved, That where an employe voluntarily quits his work he shall give three days' notice to employer, and shall then be paid amount due, or given statement when leaving his employment.

27. Resolved, Local rules shall be drawn up by the operators and miners jointly to govern the regulation and care of wash-houses.

28. Resolved, That all props be delivered to the working places of the men by the company, and that proper blanks be furnished to the miners to be filled out in order that they can have posts furnished them of the required length.

29. Resolved, That all miners and mine laborers be paid in cash for their labor, at the mine, on the Saturdays nearest the 10th and 25th of each month, and 7 full hours shall be worked pay days, for which payment for one full day shall be made.

30. Resolved, That the work performed the first half of the month be measured on the 16th, and the work performed in the latter half of the month be measured on the 1st day of the succeeding month.

31. Resolved, That all posting in room work shall be done by the miner in such a manner that his working place shall always be kept in a safe and proper condition, and the miner shall do the ordinary room posting in gob or wide entries.

32. Resolved, That all oils furnished to day men be charged at the same rate as charged to miners.

33. Resolved, That mine workers shall not be allowed to enter the mine later than 7 a. m., and that one hour shall be taken for noon in this district. Further, that six men at one time shall be allowed to go up on a cage at any time until proper escape shaft is furnished.

34. Resolved, That all shooting shall be done during the first half of the noon hour and at the close of the working day, providing shooting is done twice a day; if only done once a day, then it shall be done at the close of the working day; but it may be agreed between the

mine management and miners whether the shooting shall be done once or twice a day.

35. Resolved, That the miners shall have the right to choose their own doctor.

36. Resolved, That the following shall be collected through the office: Requirement of the U. M. W. of A., the checkweighman's wages, sick and death benefit funds and the wash-house keeper's wages.

37. Resolved, That the price for blacksmithing be paid at the rate of one cent on the dollar of wages earned by the miner.

38. Resolved, That no mine worker of Michigan shall be discriminated against or blacklisted because of his connection with the United Mine Workers of America or for any other cause.

39. Resolved, That the price of powder and of oil be the same as now charged; these prices subject to the market changes.

40. Resolved, That no strike shall take place owing to any dispute arising at any time under the jurisdiction of district No. 24 (except for refusal of employers to pay wages on the regular pay day without satisfactory explanation, or danger to life and limb, or inaccuracy of weighing scales and when the screens are out of repair, unless employers and employes can agree on difference to be paid on account of scales and screens being out of order) until the dispute at the mine affected has been thoroughly investigated by the officers of District No. 24, U. M. W. of A., and the Operators' Commissioner.

41. Resolved, Any employe suspended or discharged may request and demand an investigation into the validity of such suspension or discharge, when it shall be the duty of the mine management and the mine committee to go into an investigation of the facts, when, if they can agree upon a decision, the incident shall be considered closed. In case they fail to agree, then the matter shall be referred to the District President and the Operators' Commissioner, who shall render a decision in three days. It is further provided, that any person discharged or suspended shall remain idle three days, and in the event no decision is reached in three days then the person discharged or suspended shall resume work until a decision is reached, investigation to begin immediately.

42. MACHINE MINING (CHAIN AND PUNCHING MACHINES)

CHAIN MACHINE MINING SCALE.

Loading and drilling in rooms	$0.50
Loading and drilling in entries	.64
Loading and drilling in breakthroughs	.64
Cutting in rooms	.16
Cutting in entries	.20
Cutting in breakthroughs	.20

PUNCHING MACHINE SCALE.

Loading and drilling in rooms	$0.50
Loading and drilling in entries	.64
Loading and drilling in breakthroughs	.64
Cutting in rooms	.20½
Cutting in entries	.25½
Cutting in breakthroughs	.25½
Shearing in entries, per yard	1.06
Shearing in rooms, per yard	.50

Room turning—entry price.

433. Resolved, That all places in machine mines driven less than eighteen feet wide shall be paid entry price.

44. Resolved, That the same rules that govern in pick mines in reference to slate and foreign substances shall also apply to machine mines.

45. Resolved, That the division of pay for punching machine men when working at contract prices, be considered a local question for adjustment between the men themselves; but work shall not be suspended at any time because of a failure to adjust by the cutter and helper.

That all chain machine men receive equal pay for their labor.

46. Resolved, That all machine runners be provided with at least twenty, or a sufficient number of picks to perform their labor.

47. Resolved, That all chain machine runners shall cut coal close to bottom and shall not leave more than four inches of coal, and the bug dust shall be loaded out with the coal by the loader, and the machine runner shall throw bug dust back instead of against the face, and where stumps are left by machine runners, they shall remove the same or pay the loaders for removing the stump.

48. Resolved, No blacksmithing shall be charged loaders or machine runners in machine mine.

49. Resolved, That where pick carriers are employed they shall receive $1.25 per day.

50. Resolved, That in deficient places the price of loading and cutting with machines shall be determined upon by the loader, runner and mine boss, and in case they fail to agree, it shall be referred to mine committee.

51. Resolved, That the same relative differential that now exists in the pick mining rate in the State of Michigan shall also apply to machine mines, and for a readjustment of the differentials, the same provisions that have been adopted to arbitrate differentials in pick mines shall also apply to machine mines.

52. Resolved, This scale is based upon eighty six cents pick mining.

53. Resolved, That the Operators' Commissioner, Thomas W. Davis, be and is hereby authorized to sign scale for and on behalf of all the operators of Michigan.

MICHIGAN COAL OPERATORS,
Per THOMAS W. DAVIS,
Commissioner.
U. M. W. of A.,
Per W. F. WILLIAMS,
Pres. District 24.

APPENDIX 8

THE ASSOCIATED TEAMING INTERESTS OF CHICAGO AND THE TEAMSTERS' NATIONAL UNION OF AMERICA

AGREEMENT.

CHICAGO, June 11, 1902.—The Associated Teaming Interests of Chicago and the Teamsters' National Union of America, by their respective officers and committees, whose signatures are hereto attached, do hereby establish and maintian for the period of one (1) year from date a joint arbitration board composed of seven (7) members from each of the contracting parties, and they thereby agree as follows:

To submit to the arbitration of this board all differences between the contracting parties which do now or may arise during the life of this agreement.

Harry G. Selfridge.	John M. Rowan.
Albert Young.	S. T. Edwards.
John S. Field.	Samuel Johnson.
Charles Robb.	Fred S. Hartwell.
Arthur Dixon.	F. C. Bender.
James B. Barry.	Frank H. Hebard.
Henry B. Steele.	Charles G. Sagerstrom.

APPENDIX 9

AGREEMENT BETWEEN CHICAGO TYPOGRAPHICAL UNION NO. 16, AND ALLIED PRINTING TRADES AND THE INTER OCEAN PUBLISHING COMPANY (Signed March 22, 1899).

This agreement, made and entered into this 22nd day of March, 1899, by and between the Inter Ocean Publishing Company, through its authorized representatives, the party of the first part, and the subordinate unions of the International Typographical Union of the city of Chicago, consisting of Chicago Typographical Union No. 16; Chicago Stereotypers' Union No. 4; Chicago Mailers' Union No. 2, and Chicago Photo-Engravers' Union No. 5, and the subordinate unions of the International Printing Pressmen and Assistants' Union, consisting of Chicago Newspaper Web Pressmen's Union No. 81, and Chicago Assistants and Web Press Helpers' Union No. 4, by their committees duly authorized to act in their behalf, parties of the second part.

Witnesseth, That from and after Wednesday, March 22, 1899, and for a term of five years, ending March 22, 1904, and for such a reasonable time thereafter (not exceeding thirty days) as may be required for the negotiation of a new agreement, the newspaper represented by the said party of the first part binds itself to the employment in its composing-room and the departments thereof, of mechanics and workmen who are members of Chicago Typographical Union No. 16; in its stereotyping-room to stereotypers who are members of Chicago Stereotypers' Union No. 4; in its mail-room to mailers who are members of Chicago Mailers' Union No. 2; in its photo-engraving department to photo-engravers who are members of Chicago Photo-Engravers' Union No. 5; in its pressroom to pressmen and assistants who are members of Chicago Newspaper Web Pressmen's Union No. 81, and Chicago Assistant Web Pressmen and Helpers' Unoin, and agree to respect and observe the conditions imposed by the constitutions, by-laws and scales of prices of aforesaid organizations, copies of which are hereunto attached and made a part of this agreement.

And it is further agreed that aforesaid constitution and by-laws may be amended by said parties of the second part without the consent of the party of the first part; provided, however, that such changes do not in any way conflict with the terms of the scales and rules as set forth in this contract.

It is further agreed that the scale of prices of the Chicago Typographical Union No. 16, adopted March 17. 1897, shall continue without change, during the life of this contract, except as may be mutually agreed between the parties hereto.

A standing committee of two representatives of the party of the first part, and a like committee of two representing the parties of the second part, shall be appointed; the committee representing the parties of the second part shall be selected by the union whose interests are directly affected; and in case of a vacancy, absence or refusal of either of such representatives to act, another shall be appointed in his place, to whom shall be referred all questions which may arise as to the scale of prices, the construction to be placed upon any clauses of the agreement, or alleged violations thereof, which cannot be settled otherwise, and that such joint committee shall meet when any question of difference shall have been referred to it for decision by the executive officers of either party to this agreement, and should the joint committee be unable to agree, then it shall refer the matter to a board of arbitration, the representatives of each party to this agreement to select one arbiter, and the two to agree upon a third. The decision of this board shall be final and binding upon both parties.

The party of the first part hereby agrees that he shall not, during the continuance of this agreement, introduce into his composing-room any font of type that shall be leaner than the leanest corresponding type now in use in any one of the offices in the city of Chicago; provided, that if any font of type leaner than the leanest corresponding type now in use by the party of the first part, but up to the International Typographical Union standard, shall be introduced by the party of the first part, the difference in measurement between the type introduced and its corresponding type now in use shall be given to the compositor.

It is agreed that should the International Typographical Union and the American Newspaper Publishers' Association mutually adopt a new standard for the measurement of type, said standard shall be used in the Inter Ocean office under the jurisdiction of the parties to this agreement and that, if said standard shall necessitate a new scale of wages, said scale shall, if possible, be fixed by the Joint Standing Committee of the two parties to this agreement; and that, should said committee fail to agree, the question shall be submitted to a board of arbitration, as above provided for, the decision of said board to be binding upon both parties to this agreement.

It is further agreed by the party of the first part that in the event

of the substitution of machines other than the Linotype, for hand composition or distribution, a scale of wages may be agreed upon by the Joint Committee of the parties to this agreement; but if no satisfactory conclusion can be reached, the matter shall be referred for final settlement to a board of arbitration as above provided for.

It is agreed by the said parties of the second part that for and in consideration of the covenants entered into and agreed to by said party of the first part, the said parties of the second part shall at all times during the life of this agreement truly and faithfully discharge the obligations imposed upon them by furnishing men capable of performing the work required in the various mechanical departments of the party of the first part.

It is agreed that both the language and the spirit of this contract between the Inter Ocean Publishing Company, party of the first part, and the organizations known as Chicago Typographical Union No. 16, Chicago Stereotypers' Union No. 4, Chicago Mailers' Union No. 2, and Chicago Photo-Engravers' Union No. 5, being trades-unions chartered by and under the jurisdiction of the International Typographical Union, an organization having its headquarters at Indianapolis, Indiana, and Chicago Newspaper Web Pressmen's Union No. 81, and Chicago Assistants and Web Pressmen and Helpers' Union, organizations chartered by and under the jurisdiction of the International Printing Pressmen and Assistants' Union of North America, by their committees duly authorized to act in their behalf, parties of the second part, make it imperatively obligatory on both parties whenever any difference of opinion as to the rights of the parties under the contract shall arise, or whenever any dispute as to the construction of the contract or any of its provisions takes place, at once to appeal to the duly constituted authority under the contract viz., the Joint Standing Committee, to the end that fruitless controversy shall be avoided and good feeling and harmonious relations be maintained, and the regular and orderly prosecution of the business in which the parties have a community of interest be insured beyond the possibility of interruption.

It is further stipulated and agreed that the party of the first part shall not now or during the life of this contract enter into any association or combination hostile to the printing trades unions, nor shall it at any time render assistance to such hostile combination or association by suspension of publication or any other art calculated to injure the printing trades unions.

And the party of the second part hereby agrees to enter into no combination or association with the intent or purpose of injuring the Inter

Ocean Publishing Company or its property, and shall not be a party to any hostile act with similar intent.

In witness whereof, We have hereunto set our hands and seals this 22nd day of March, 1899.

THE INTER OCEAN PUBLISHING COMPANY,
By W. F. Furbeck, President.
Wm. Penn Nixon, Secretary.

CHICAGO TYPOGRAPHICAL UNION NO. 16,
By John McParland.
A. C. Rice.

CHICAGO STEREOTYPERS' UNION NO. 4,
By R. B. Prendergast.
John S. Healy.

CHICAGO MAILERS' UNION NO. 2,
By J. J. Kinsley.
Wm. McInerney.

CHICAGO PHOTO-ENGRAVERS' UNION NO. 5,
By J. S. Falkinburg.
G. A. Gink.

CHICAGO NEWSPAPER WEB PRESSMEN'S UNION NO. 81,
By Thos. P. Fitzgerald.
E. W. Carr.

CHICAGO ASSISTANTS AND WEB PRESS HELPERS' UNION NO. 4,
By P. C. McKay.
William E. Hill.

This contract is entered into by and with the consent of the International Typographical Union, an organization to which the party of the first part concedes jurisdiction and control over trade organizations in all mechanical departments of the party of the first part, with the exception of the pressroom, and this contract is entered into by and with the consent of the International Printing Pressmen and Assistants' Union of North America, to which organization the party of the first part concedes jurisdiction over trade organizations controlling all employees of the pressroom and the International Typographical Union, through its authorized representative, and the International Printing Pressmen and Assistants' Union, through its authorized representative, do hereby severally agree to protect the party of the first part in case of violation of the agreement by any of the said parties of the second part under the respective jurisdiction of said International unions, but such unions shall not be guarantors as to each other.

In witness whereof, We have hereunto set our hands and seals, this 22nd day of March, 1899.

SAMUEL B. DONNELLY,
President, International Typographical Union.
JAMES H. BOWMAN,
President, International Printing Pressmen and Assistants' Union.
JOHN G. DERFLINGER.

APPENDIX 10

ARBITRATION AGREEMENT BETWEEN AMERICAN NEWSPAPER PUBLISHERS' ASSOCIATION AND INTERNATIONAL TYPOGRAPHICAL UNION

SECTION 1. On and after May 1, 1902, and until May 1, 1907, any publisher who is a member of the American Newspaper Publishers' Association, employing union labor in any department or departments of his office under a contract or contracts, written or verbal, with a local union or unions affiliated with the International Typographical Union where such contracts have been approved by the president of the latter organization as well as under all contracts in force on May 1, 1901, shall have the following guarantees:

a. He shall be protected under such contract or contracts by the International Typographical Union against walk-outs, strikes, boycotts, or any other form of concerted interference with the peaceful operation of the department or departments of labor so contracted for, by any union or unions with which he has contractual relations; provided such publisher shall enter into an agreement with the International Typographical Union to arbitrate all differences that may arise under said verbal or written contracts between said publisher and the local union affecting union employees in said department or departments, if such said differences can not be settled by conciliation.

b. All disputes arising over scale provisions relating to wages and hours in renewing or extending contracts shall likewise be subject to arbitration under the provisions of this agreement, if such disputes can not be adjusted through conciliation.

It is expressly understood that contracts hereafter entered into by publishers with allied trades councils shall not be recognized as coming under the terms of this agreement.

SECTION 2. The International Typographical Union further agrees to arbitrate any and all differences that may arise in the mechanical departments of any newspaper, member of the American Newspaper Publishers' Association, which shall enter into an agreement to that effect; provided all departments of said newspaper under the jurisdiction of the International Typographical Union are strictly union departments and are so recognized.

SECTION 3. The question whether a department shall be union or non-union shall not be classed as a "difference" to be arbitrated.

SECTION 4. If conciliation between the publisher and a local union fails, then provision must be made for local arbitration. If local arbitration or arbitrators can not be agreed upon, all differences shall be referred, upon application of either party, to the National Board of Arbitration. In case a local board of arbitration is formed, and a decision rendered which is unsatisfactory to either side, then review by the National Board of Arbitration may be asked for by the dissatisfied party, provided notice to the other party to that effect is given within fifteen days thereafter. It shall be optional with the board to grant or deny such review as the facts in the case may warrant.

SECTION 5. In case a review is granted, as provided in section 4, the National Board of Arbitration shall not take evidence except by a majority vote of the board, but both parties to the controversy may be required to submit records and briefs, and to make oral or written arguments (at the option of the board), in support of their several contentions. They may submit an agreed statement of facts, or a transcript of testimony properly certified to, before a notary public by the stenographer taking the original evidence or depositions.

SECTION 6. Pending final decision, work shall be continued in the office of the publisher, party to the case, and the award of the National Board of Arbitration shall, in all cases, include a determination of the issues involved, covering the period between the raising of the issues and their final settlement; and any change or changes in the wage scale of employees may, at the discretion of the board, be made effective from the date the issues were first made.

SECTION 7. Union departments shall be understood to mean such as are made up wholly of union employees, in which union rules prevail, and in which the union has been formally recognized by the employer.

SECTION 8. This agreement shall apply to individual members of the American Newspaper Publishers' Association or local associations of publishers accepting it and the rules drafted hereunder, at least sixty (60) days before a dispute shall arise.

SECTION 9. The National Board of Arbitration shall consist of the

president of the International Typographical Union and the commissioner of the American Newspaper Publishers' Association, or their proxies and in the event of a failure to reach an agreement, these two shall select a third member in each dispute, the member so selected to act as chairman of the board. The finding of the majority of the board shall be final, and shall be accepted as such by the parties to the dispute under consideration.

SECTION 10. In the event of either party to the dispute refusing to accept and comply with the decision of the National Board of Arbitration, all aid and support to the firm or employer, or local union refusing acceptance and compliance, shall be withdrawn by both parties to this agreement. The acts of such recalcitrant employer or union shall be publicly disavowed, and the aggrieved party to this agreement shall be furnished by the other with an official document to that end.

SECTION 11. The said National Board of Arbitration must act, when its services are desired by either party to a dispute as above and shall proceed with all possible dispatch in rendering such services.

SECTION 12. All expenses attendant upon the settlement of any dispute, except the personal expenses of the commissioner of the American Newspaper Publishers' Association and the president of the International Typographical Union shall be borne equally by the parties to the dispute.

SECTION 13. The conditions obtaining before the initiation of the dispute shall remain in effect pending the finding of the local or of the National Board of Arbitration.

SECTION 14. The following rules shall govern the National Board of Arbitration in adjusting differences between parties to this agreement:

1. It may demand duplicate typewritten statements of grievances.
2. It may examine all parties involved in any differences referred to it for adjudication.
3. It may employ such stenographers etc., as may be necessary to facilitate business.
4. It may require affidavit on all disputed points.
5. It shall have free access to all books and records bearing on points at issue.
6. Equal opportunities shall be allowed for presentation of evidence and argument.
7. Investigations shall be conducted in the presence of the representatives of both parties.
8. The deliberations shall be conducted in executive session, and the findings, whether unanimous or not, shall be signed by all members of the board in each instance.

9. In the event of either party to the dispute refusing to appear or present its case after due notice, it may be adjudicated in default, and findings rendered against such party.

10. All evidence communicated to the board in confidence shall be preserved inviolate, and no record of such evidence shall be kept.

SECTION 15. The form of contract to be entered into by the publisher and the International Typographical Union shall be as follows:

CONTRACT.

It is agreed between ——— publisher and proprietor of the ———, and ———, duly authorized to act in its behalf, party of the first part, and the International Typographical Union, by its president, duly authorized to act in its behalf and also in behalf of ——— Union of ———, as follows:

That any and all disputes that may arise—

1. Under any contract, verbal or written, in force May 1, 1901.

2. Under any contract, verbal or written, approved by the president of the International Typographical Union.

3. All disputes arising over scale provisions relating to wages and hours in renewing and extending contracts between ——— publisher(s) or proprietor(s) and the —— union(s), or any member thereof, now operating in the ——— department(s) of the ——— shall first be settled by conciliation between the publisher and the authorities of the local union, if possible. If not, the matter shall be referred to arbitration, each party to the controversy to select one arbitrator, and the two thus chosen to select a third, the decision of a majority of such board of arbitration to be final and binding upon both parties, except as hereinafter provided for.

If local arbitration or arbitrators can not be agreed upon, all differences shall be referred, upon application of either party, to the National Board of Arbitration, consisting of the president of the International Typographical Union and the commissioner of the American Newspaper Publishers' Association, or their proxies; and if the board thus constituted can not agree, it shall be authorized to select an additional member, and the decision of a majority of this board, thus constituted, shall be final and binding upon both parties.

Pending arbitration and decision thereunder work shall be continued as usual in the office of the publisher(s) part— to this agreement, and the award of the arbitrators shall, in all cases, include a determination of the issues involved covering the period between the raising of the issues and the final settlement, and any change or changes in the wage

scale of employees, or other ruling, may, at the discretion of the arbitrators, be made effective from the date the issues were first made.

In case a local board of arbitration is formed, and a decision rendered which is unsatisfactory to either side, then a review may be asked of the National Board of Arbitration by the dissatisfied party. Pending decision under such review from a local board of arbitration, work shall be continued as usual in the office of the publisher(s), part— to the case, and the award of the National Board of Arbitration shall, in all cases, include a determination of the issues involved, covering the period between the raising of the issues and their final settlement; and any change or changes in the wage scale of employees, may, at the discretion of the board, be made effective from the date the issues were first made.

In consideration of the agreement by the said publisher(s) or proprietor(s) to arbitrate all differences as provided for herein with the ——— union(s), the International Typographical Union agrees to underwrite to said contract and guarantee ——— fulfillment on the part of ——— union(s).

It is expressly understood and agreed that the sections numbered from one to sixteen inclusive, of the agreement between the American Newspaper Publishers' Association and the International Typographical Union hereunto attached shall be considered an integral part of this contract, and shall have the same force and effect as though set forth in the contract itself.

This contract shall be in full force and effect from ———, 1302, to the first day of May, 1907, unless amended sooner by mutual consent.

In witness whereof, the undersigned publisher(s) or proprietor(s) of the said newspaper and the president of the International Typographical Union have hereunto affixed their respective signatures, in triplicate this —— day of ———, 190—.

——— ———

Publisher(s) or Proprietor(s) ——— ———

——— ———

President International Typographical Union.

Witness, as to publisher,

——— ———

Witness, as to president,

——— ———

SECTION 16. This covenant between the International Typographical Union and the American Newspaper Publishers' Association shall remain in effect from the 1st day of May, 1902, to the 1st day of May, 1907, but amendments may be proposed to this agreement by either

party thereto at least ninety days before the 1st day of May in any year, and on acceptance by the other party to the agreement, shall become a part thereof.

Now, therefore, it is mutually agreed as follows:

First. This agreement shall be published simultaneously by the two bodies at such time as may hereafter be decided upon.

Second. The agreement shall be submitted for ratification to the American Newspaper Publishers' Association at its annual meeting in February, 1902, and immediately thereafter to the executive council of the International Typographical Union. If formally ratified as a whole by both bodies, it shall become effective on May 1, 1902, and remain in full force and effect for five years thereafter, unless mutually amended sooner as therein provided for.

In witness whereof, we have hereunto affixed our signatures this 3d day of January, 1902.

(Signed) A. A. McCORMICK, *Chairman.*
M. J. LOWENSTEIN
For the special standing committee of the American Newspaper Publishers' Association.
FREDERICK DRISCOLL,
Commissioner.
JAMES M. LYNCH,
C. E. HAWKES,
HUGO MILLER,
J. W. BRAMWOOD,
For the International Typographical Union.

The attached agreement was unanimously approved of by the American Newspaper Publishers' Association at its annual convention on February 19, 1902, and subsequently the same was approved by the executive council of the International Typographical Union, acting under authority from the International Typographical Union convention.

W. C. BRYANT, *Secretary.*

APPENDIX 11

AMALGAMATED WOOD-WORKERS COUNCIL OF CHICAGO.

ARTICLES OF AGREEMENT

Agreement entered into this.....day of.....1902 between, ..., manufacturers of....., parties of the first part, and the undersigned representatives of the AMALGAMATED WOOD-WORKERS COUNCIL OF CHICAGO, parties of the second part.

Article 1. The party of the first part hereby agrees to employ none but members of the AMALGAMATED WOOD-WORKERS COUNCIL, who are in good standing and carry the current quarterly card of the organization.

Article 2. The party of the first part agree that the representatives of the Wood-Workers Council of Chicago, shall have access to the mill or factory of said party of the first part, at any reasonable time.

Article 3. The minimum scale of wages for journeymen working either on the bench or on woodworking machinery in the mill or factory of the party of the first part, shall be 25c per hour and for wood-carvers 28c per hour and that nine (9) hours shall constitute a day's work; and it shall be understood that all employees receiving more than the foregoing scale shall not be subject to any reduction in wages by reason of the adoption of this agreement.

Article 4. All overtime shall be paid for at the rate of time and one-half. Double time shall be paid for all work done on Sundays, New Years Day, Decoration Day, Fourth of July, Thanksgiving Day, and on Christmas Day, but not on days celebrated for them. No work shall be allowed under any pretence on Labor Day.

Article 5. There shall be a regular pay day at least once in every two weeks, and there shall not be more than three days kept back. A strike to enforce this article, shall not be considered a violation of this agreement.

Article 6. The party of the first part, may have one apprentice to every ten (10) bench men, or majority fraction thereof, he to work on the bench, and one apprentice to every ten (10) machine men, or majority fraction thereof, he to work on machines. Each apprentice

shall serve a term of three (3) years at the following rate of wages: First year $1.00 per day, second year $1.25 per day, third year $1.50 per day, and no one shall be accepted as an apprentice under sixteen (16) years of age, or over twenty (20) years of age, and all apprentices shall carry the current quarterly apprentice card of the Wood-Workers' Council of Chicago.

Article 7. There shall be a steward in each mill or factory of the party of the first part, appointed by the business agent and it shall be his duty to control the working cards of the men in said mill or factory and report all violations to the business agent of his district or to the office of the council.

Article 8. Engineers employed by the party of the first part shall belong to and carry the card of the International Union of Steam Engineers No. 3. All shipping clerks employed by the party of the first part, shall belong to the A. W. W. I. U. of A. and carry the current quarterly card of the A. W. W. Council of Chicago.

Article 9. A sympathetic strike to protect union principles shall not be considered a violation of this agreement.

Article 10. The party of the first part, shall be entitled to the use of and be furnished with the label of the A. W. W. I. U. of A. and all work manufactured by the party of the first part, must be stamped before delivery.

Article 11. All interior finish, doors and other mill work specified to be filled by the party of the first part, shall be filled by members of the Painters' Union, who carry the current quarterly card of the Painters' District Council.

Article 12. In the event of any dispute between the parties to this agreement the party of the first part, and the representatives of the A. W. W. Council shall endeavor to arrive at a satisfactory settlement and in case no settlement can be arrived at, each shall appoint a practical man, those two shall appoint a third, the three to act as a board of arbitration whose decision shall be final.

Article 13. It is further agreed that at least thirty days prior to the expiration of this agreement it shall be open for discussion for any changes desired by either party to this agreement.

Article 14. This agreement shall be in force from date of signing hereof, until the first day of March, 1903.

For party of the first part.	For party of the second part.
.....	
.....	
.....	



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THE FINANCIAL HISTORY OF WISCONSIN

BY

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PREFACE

In the preparation of this work the writer has had in mind continually two classes of readers, the one having a general or a personal interest in Wisconsin history, the other having a scientific or professional interest in public finance and its problems. In order to make the production of greater interest to the first class the personal element has been brought in as much as possible; while on the other hand the writer has attempted to present and discuss the history and its problems in a scientific spirit.

The striking characteristics of Wisconsin's financial history are many and significant, among which may be mentioned, the careful provisions of the Constitution to guard against a great and burdensome state debt, the great extravagance in local communities, the Constitutional struggle as to the meaning of uniformity in taxation and as to the Constitutional limitations on the taxing power of the legislature, the fraud, waste, and corruption that characterized the sale and management of the state lands and also the administration of the Trust or Education Funds arising from the sale of such lands, the great and steady increase in expenditure for state administration, the great development of corporation taxes, the rapid development and extension of the state administered ad valorem tax on public service corporations, and the recent significant and important developments in the direction of a complete centralization in the assessment and levy of local taxes.

Grateful acknowledgements are due to Professor Richard T. Ely, Professor John R. Commons and Professor Thomas S. Adams of the University of Wisconsin for their encouraging interest in this study; to Professor Henry B. Gardner, of Brown University, for valuable direction and stimulating criti-

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Madison, Wisconsin.

THE FINANCIAL HISTORY OF WISCONSIN

CHAPTER I

AN HISTORICAL SKETCH OF WISCONSIN'S POLITICAL STATUS

The history of Wisconsin as a white man's country began in the year 1634, when clad in Oriental robes and discharging two pistols to excite the wonder of the strange Indians whom he was meeting, Jean Nicholet, "agent of the inquiring and politic Champlain," seeking a passage to China, disembarked on Wisconsin soil and took possession of the region in the name of the King of France[1]. As a result of the French and Indian War Wisconsin passed in 1763 into the hands of the English and became a part of the Province of Quebec. In 1783, at the close of the Revolutionary War Wisconsin became American territory. It was without organization until 1787, when through the famous Ordinance of that year it became a part of Northwest Territory. In the years from 1787 to 1818 it was successively a part of Northwest Territory, of Indiana Territory, and of Illinois Territory. When in 1800 the region afterward called Ohio was organized as the Northwest Territory, the rest of the Old Northwest Territory was named Indiana Territory. In 1816 the State of Indiana was created and the Wisconsin country became a part of the Territory of Illinois. When two years later Illinois was admitted to the Union, Wisconsin became a part of Michigan Territory. The erection in 1836 of the State of

[1] Vide Thwaites, *French Regime in Wisconsin*, in *Wisconsin Historical Society Collections*, XVI.

Michigan made necessary the organization of the Territory of Wisconsin, which became a state in 1848.

The Ordinance of 1787 gave to the prospective fifth state of the Old Northwest Territory a much greater area than that possessed by the State of Wisconsin. The upper Michigan Peninsula was taken from Wisconsin and given to Michigan in order to compensate the latter for its loss to Ohio of the Toledo area, which according to the Ordinance of 1787 belonged to Michigan. The Chicago strip, the area bounded by the southern boundary of Wisconsin and a line parallel to that boundary and passing through the southernmost point of Lake Michigan, was given to Illinois in 1818 in order that Illinois might have a lake front. In 1838 the trans-Mississippi area of the Territory of Wisconsin was erected into the Territory of Iowa and in 1846 a part of Wisconsin became the Territory of Minnesota.[2]

As has been observed the Chicago strip was given to Illinois in order that she might have a lake front. The delegate to Congress from Illinois Territory, Nathaniel Pope, in urging the adoption of his amendment to the Illinois Enabling Act, argued that Illinois was the key to the West and that upon her possession of a lake port might depend her fidelity to the Union. Illinois, he said, had practical control of the Ohio, Wabash and Mississippi rivers, all of which flowed south. It was highly desirable that Illinois have a lake coast that would afford it communication with Indiana, Ohio, Pennsylvania and New York. Such a lake front might be essential to the integrity of the union. Judge Pope argued that if Illinois were entirely dependent on southern flowing rivers, "in case of national disruption the interest of the state would be to join a southern and western confederacy." It was important, he argued, that Illinois have a balancing northern commercial connection with the Great Lakes and thence with the eastern states.[3] This argument shows an appreciation of the close relation between political affiliation and economic interest.

In consequence of the loss of the Chicago strip, there was a

[2] Vide Thwaites, *Boundaries of Wisconsin*, in *Wisconsin Historical Society Collections*, XI.

[3] Ibid., 495.

boundary dispute in Wisconsin for years. In 1843 the territorial legislature passed resolutions declaring that the United States had infringed on the boundaries of the fifth state of the Old Northwest Territory, but that Wisconsin would make no further protest if Congress would carry out the following internal improvements:

1. The construction of a railroad between Lake Michigan and the Mississippi river.
2. The improvement of the Fox and Wisconsin rivers, so as to make a national waterway between the Great Lakes and the Mississippi.
3. A canal between the Fox and Rock rivers.
4. Harbors on the west shore of Lake Michigan, at Southport (Kenosha), Racine, Milwaukee, Sauk Harbor, Sheboygan, and Manitowoc.

The attitude of the territorial legislature was very belligerent. It was declared that if Congress did not accede to the terms offered or did not admit Wisconsin to the Union with her ancient boundaries, Wisconsin "would be a state out of the Union, and possess, exercise and enjoy all the rights, privileges and powers of the sovereign, independent State of Wisconsin, and if difficulties must ensue, we could appeal with confidence to the Great Umpire of Nations to adjust them." It was declared in unequivocal terms that Wisconsin would maintain the integrity of its borders and if peaceful means failed, every other means within its power, whatever might be the sacrifice, would be resorted to.

Congress paid no attention to this threat of secession. The southern boundary was not changed, nor were the improvements asked for granted until long afterward.[4]

This affair is interesting and suggestive. Viewed in the light of the many northern threats of secession, the term rebel applied to the South is devoid of stigma. Loyalty to the Union was just as characteristic of the South as of the North. Each was loyal just as long as the federal government did not infringe on state rights nor impair state interests.

[4] Thwaites, R. G., *The Story of Wisconsin*. (Boston 1890), 217, 218, 219.

Wisconsin certainly had a legal right to her boundaries as defined by the Ordinance of 1787, but in the opinion of the writer there is grave doubt as to her moral right to them. On the whole the boundaries of 1787 were rather artificial and not altogether sensible. Ohio certainly has more natural right than Michigan to the Toledo strip, and there is no reason why Illinois should have been left without a lake front when there was an opportunity to give her one. Furthermore, Wisconsin with her ancient boundaries would be three times as large as she now is.[5]

[5] Vide maps in Thwaites' *Boundaries*.

CHAPTER II

FINANCES AND THE CONSTITUTION

I. Finances in the Constitutional Convention

The Constitution of the state of Wisconsin was framed and adopted at a time when the disasters of wild-cat banking and of unwise and corruptly managed internal improvements by the states were still fresh in the minds of the American people. Eleven years before, in 1837, Michigan, infected with the speculative fever of the time, had entered the Union. The people of Wisconsin had seen their neighbor state become saddled with a heavy public debt, as a result of entering upon great systems of internal improvements far too extended for the state's needs and requiring expenditures far beyond its means. In Illinois, also close at hand, state banking and state improvements had both resulted in failure and disaster. That the disasters of the era of speculative public improvements that closed with the panic of 1837 were still fresh in the minds of the men who in 1848 drafted the constitution for the state of Wisconsin is evident from the debates of the Constitutional Convention and from the provisions of the Constitution relating to public debt and internal improvements. It is very clear that Wisconsin profited by the lessons to be learned from the disastrous experiences of her older sisters in the Union.

The framers of the Constitution for the Badger State were not seers; they did not create a constitution that will answer all needs and purposes until the millennium arrives, but they did frame a constitution that at least in so far as its financial provisions are concerned was a wise one and a fairly adequate one. They made no provision for a tax on incomes, but could they have been expected to foresee the necessity for such a tax?

They were perhaps overcautious in limiting the amount of state debt as they did, but the disastrous experiences of local governments in Wisconsin in the matter of public debt and the vile corruption that has at times marked the administration of state affairs in Wisconsin lead one to the conclusion that the restriction was on the whole a wise one. One grave criticism must, however, be passed upon the original constitution. It did not restrict sufficiently municipal indebtedness. This defect has, however, as will be shown later, been remedied.

The financial provisions of the constitution of the state of Wisconsin fall into four categories,—taxation, public debt, internal improvements, and school lands. The committee on finances reported with respect to taxation the following, "*All taxes levied in this state shall be as nearly equal as may be.*"[1] The committee was evidently striving for a rule of equality and uniformity, but the indefiniteness and ambiguity of its recommendation were so great as to justify the objection of one member who declared that he wanted a constitution that the common people could understand and not one that no one but a lawyer could interpret. The first amendment adopted changed the committee's recommendation so as to read, "*All taxes levied in this state shall be as nearly equal as is practicable, and shall be levied upon such property as the legislature shall prescribe.*" Next it was decided to substitute for "*All taxes levied in this state shall be as nearly equal as is practicable,*" the words, "*The rule of taxation shall be uniform throughout this state.*" The form finally adopted is, "*The rule of taxation shall be uniform and taxes shall be levied upon such property as the legislature shall prescribe.*"[2] The following amendment was proposed and lost, "All taxes levied in this state shall be uniform and equal; and shall be levied upon a just valuation of real and personal property." There was considerable struggle over the exemption of property from taxation. The finance committee of the convention favored an exemption provision and reported the following, "The property of the state and counties,

[1] *Journal of Constitutional Convention of 1847-48*, 113.
[2] *Constitution of Wisconsin*, Sec. 1, Art. VIII.

both real and personal, and such property as the legislature shall deem proper, belonging to educational, charitable or religious institutions, or set apart for such purposes, shall be exempted from taxation." The convention decided, however, that the matter of exemption should be left without restriction to the legislature.

So we see that the Constitution of the state of Wisconsin provides first, that *the rule of taxation shall be uniform* and secondly, that *taxes shall be levied upon property,* prescribed by the legislature. Like many other states, Wisconsin has long since discovered that a property tax is not sufficient, that it does not meet all the requirements of justice and equality. In 1903 a joint resolution was adopted by the legislature to add to the taxation clause the following provision, "The legislature may provide for a graduated income tax."[3] Because of the failure of the secretary of state to have the proposed amendment published three months before the election of the legislature of 1905, this resolution came to naught. Perhaps, however, it is well that it did, for the legislature of 1905 proposed a better amendment as follows, "Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."[4] If this amendment is properly advertised and is sanctioned by the legislature of 1907, it will come before the people for adoption or rejection. In the Assembly the vote on the amendment proposed in 1905 was 80 to 10; in the Senate the vote was 18 to 12.*

The Constitution is very explicit in its provisions against a permanent or a large state debt or the exploitation of the state or its treasury. The credit of the state shall never be given or loaned in aid of any individual, association or corporation. No money shall be paid out of the treasury except in pursuance of an appropriation by the legislature, and by an amendment adopted November 6, 1877, no appropriation shall be made for the payment of any claim against the state unless the claim

[3] *Laws of 1903*, 776.
[4] *Laws of 1905*, 992.
* This proposed amendment was ratified by the legislature of 1907.

is filed within six years after the debt is contracted or the claim accrues. It is stipulated that the legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year, and whenever the expenses of the state for any year exceed the income for that year, the deficit shall be included in the tax for the next year. For the purpose of defraying extraordinary expenses the state may contract debts, but such debts shall never in the aggregate exceed one hundred thousand dollars, except that debts in any amount may be contracted for repelling of invasion, suppressing insurrection or defending the state in time of war, but the money raised for such purposes shall be applied exclusively for such purposes or for the repayment of the debts. Every debt must be authorized by law, for some purpose distinctly stated in the authorizing law; the vote on a bill to authorize the contracting of a debt must be taken by yeas and nays and a majority vote of all members elected to each house is necessary to its passage. Every law authorizing a debt must provide for the levying of an annual tax sufficient to pay the annual interest on the debt and also the principal within five years from the time of the passage of the law, and must specifically appropriate the proceeds of such taxes to such payments of principal and interest. Such appropriation cannot be repealed nor the taxes postponed nor diminished until the principal and interest have been paid in full. No scrip, certificate or other evidence of state indebtedness can be issued except as indicated in the foregoing.[5] On the whole these provisions with respect to state debt are, it seems to the writer, wise. However, the criticism is perhaps just that the debt limit is too low and the period of five years too short.

The committee on general provisions, of which committee Byron Kilbourne was chairman, in its report to the Convention recommended a limit of $200,000 and a time limit of ten years. The first constitution which had been rejected by the people for reasons having nothing to do with public finances, had provided for a limit of $100,000. The first amendment to substitute $100,000 for $200,000, the amount recommended by the commit-

[5] *Constitution of Wisconsin*, Art. VIII.

tee, was lost by a vote of 20 to 25.[6] At that time a majority of the members voting evidently believed with the committee that exigencies might arise under which the $100,000 limit would be too low. At a subsequent meeting the matter was again taken up. Mr. Kinne in proposing his amendment substituting $100,000 and five years expressed the opinion that the provisions for war debt would provide for all necessary debt in excess of $100,000. He intimated that the larger sum was proposed in order to enable the state to engage in internal improvements or that the proposal was part of a general banking policy. Evidently the specters of disastrous internal improvements and of wild cat banking were stalking about in the convention hall. Mr. Kilbourne said in reply that a work of internal improvement limited to $200,000 would be a very small one indeed and that so small a sum would afford but a very insignificant capital for state banking. Another member, Mr. Gale, said that he did not see for what purpose a debt of $200,000 could be required unless it should be for internal improvements. The fear of internal improvement disasters and of a ruinous state bank were so great that the amendment to substitute $100,000 for $200,000 was carried by a vote of 37 to 24, and the amendment to substitute five years for ten years was carried by a vote of 41 to 18.

The $100,000 limit was undoubtedly too low. In 1858 a select committee of the legislature recommended an amendment providing that the state might for the purpose of erecting and enlarging public buildings contract a debt not in excess of $700,000 to be paid in eighteen years, but nothing came of the recommendation.[7] If provision had been made for a larger debt the necessity for the early painful financial struggles of the State University would not have arisen and it would not have been necessary to erect university buildings out of the University Fund, a procedure that was certainly contrary to the terms of the land grant by congress for the maintenance of a state university. In 1862 a law was enacted canceling the loan from the fund for the erection of Main Hall and authorizing the

[6] *Journal of Constitutional Convention*, 195.
[7] *Milwaukee Sentinel*, April 29, 1858.

regents to cancel with money drawn from the Fund all indebtedness for buildings. Main Hall cost $45,810; the rest of the building debt amounted to $47,416.27. The first appropriation for the University, an appropriation of $7,303.76 annually for ten years, was the interest on the amount spent from the Fund on buildings.[8]

As has already been said the constitution, prior to the amendment of November 3, 1874, did not adequately restrict municipal indebtedness. It provided merely that it is the duty of the legislature to provide for the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing of money, contracting of debts and the loaning of their credit, in order that abuses in assessments, in taxation and in contracting debts may be prevented. Experience has shown that in Wisconsin this general power and obligation to regulate local finances has not been sufficient. The constitutional amendment of November 3, 1874, provides that no county, city, town, village, school district, or other municipal corporation can become indebted in any manner or for any purpose, to any amount including existing indebtedness in excess of five per cent of the value of the taxable property in the municipality, such value to be ascertained from the assessment for state and county taxes next preceding the time when the indebtedness is incurred. A municipal corporation must, at or before the time of incurring indebtedness, provide for the collection of a direct annual tax sufficient to pay the interest on the debt as it falls due and sufficient also to pay the principal within twenty years.[9] In the general power given the legislature to regulate municipalities the word *assessment* following as it does the word *taxation* is of great significance, as we shall see subsequently in the discussion of the legality of local assessments.

The question of internal improvements was a much debated one in the constitutional convention and as a result of the struggle carried on in the convention it was provided that the state of Wisconsin shall never contract any debt for works of internal

[8] *Laws of 1862*, ch. 268; *Laws of 1867*, ch. 82.
[9] *Constitution of Wisconsin*, Sec. 3, Art. XI.

improvement, or be a party to the carrying on of such works, but whenever grants of land or other property shall have been made to the state and are specially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works and shall devote thereto the avails of such grants and may pledge or appropriate to their completion any revenues derived from such works.[10] The committee on internal improvements reported to the convention a recommendation embodying all the provisions finally adopted, except the one relating to the appropriation to the completion of the works of the revenues derived from them. There was a minority report recommending that the question of internal improvements be left to the people. A protracted debate followed the two reports. There was some considerable opposition to the plan of forbidding internal improvements by the state. It was advocated that the state be allowed to enter upon internal improvements not exceeding in cost $300,000 and that each internal improvements bill receive the sanction of the people before it should become a law, and further that an annual tax be levied sufficient to pay off the internal improvement debt in fifteen years. The valuable improvements made by the state of New York were pointed to and it was declared by H. T. Sanders that, "Because some of the states, when possessed of unlimited power upon the subject, had in a period of general excitement and speculation abused that power, it did not follow of necessity that it was not a salutary power under proper restrictions and limitations." Internal improvements it was declared, undertaken judiciously by states, had been of incalculable benefit not only to themselves but also to neighboring states and to the nation as a whole. It was declared that the state of New York had doubled its wealth through its internal improvements, and the great importance to the West and to the Nation of the Erie Canal was dwelt upon.[11]

Another member, Mr. Chase, thought that experience should not be borrowed from New York, a state overflowing with wealth seeking investment, but that it should be borrowed rather from

[10] Ibid., Sec. 10, Art. VIII.
[11] *Journal of the Constitutional Convention*, 208.

Illinois and Michigan, which as is well known met with disaster in their internal improvement enterprises. In reply to the contention that internal improvements under the plan proposed would not be undertaken unless the people wanted them, this speaker observed that the same had been true in Michigan, where three grand schemes for three different parts of the state were brought forward at the same time; local interests effected the adoption of all three and the state was thrown into hopeless debt.[12] Mr. Sanders' amendment, which provided for internal improvements "under proper restrictions and limitations," was finally laid on the table.*

Later Mr. Lovell offered a substitute for the internal improvements clause reported by the committee. This substitute provided that the five hundred thousand acres of land granted by the United States for internal improvements, or the proceeds therefrom should constitute a perpetual fund the interest on which together with the five per cent of the net proceeds of sales of United States lands in the state of Wisconsin should be appropriated annually to the construction and repair of roads and bridges in the several counties according to their respective populations. This construction and repair work was to be done under the direction of the supervisors of each county. It was provided that the legislature might by law apply the proceeds of the funds or a part thereof, but each such law was to have reference to but one work of improvement and was to be valid only when approved by the majority of the votes at the general election next succeeding its enactment by the legislature. The moving of Mr. Lovell's substitute inaugurated a spirited and protracted struggle between those who desired that the five hundred thousand acre grant be devoted to internal improvements and those who wished to dedicate the grant to public education. Mr. Lovell in moving his amendment, called attention to the proposition made in the first constitutional convention to apply these funds to the support of common schools. He was in favor of supporting common schools and advancing the cause of education, but in his opinion a large school fund was not al-

[12] *Journal of the Constitutional Convention*, 211.

* Vide footnote p. 202.

ways the best means of advancing that cause. Connecticut had a magnificent school fund, yet in that state education was backward, because the people, since they were not called upon to contribute to their support, felt little interest in their schools; on the other hand Massachusettes and Rhode Island had no school funds yet were in enjoyment of splendid schools. The speaker did not favor a school fund that would support the schools throughout the year; he believed that a part of their support should be through taxation. Undoubtedly he was right in this last contention, but he greatly overestimated the value of the sixteenth section in each township grant, which he believed to be ample for the support of the schools. He overestimated also the value of the funds that he was trying to have applied to internal improvements. The sixteenth section grant, he estimated, would amount to a million dollars. He feared that if the five hundred thousand acre grant and the five per cent fund were devoted to schools much waste would result. It was his opinion that in such an event his own county of Racine for example would receive one dollar per inhabitant, one-half of which sum would be wasted.

Mr. Lovell's plan of devoting these funds to internal improvements had the merit, he affirmed, of making such improvements possible without making it possible for the state to run into debt on account of such improvements. This contention was undoubtedly true, but the history of the administration of these funds, which were dedicated to the support of schools, makes it doubtful whether the state of Wisconsin could have applied them honestly and efficiently to works of internal improvement. In addition to the proceeds of these funds it was a part of Mr. Lovell's plan to apply to public improvements the surplus over and above the expenses of the state that would arise from a tax of 1.7 mills, which tax he figured would yield on an average for the then next succeeding four years $51,000 annually, whereas Ohio had run its government for several years at an annual expense of less than $34,000.*

*It may be noted that throughout the financial history of Wisconsin, Ohio was frequently referred to as a model to be followed, or an example to be avoided.

The plan proposed by Mr. Lovell met with vigorous attack. Mr. Harvey showed that the case of Connecticut, even if its schools were inferior to those of neighboring states, proved nothing with respect to the desirability or non-desirability of a large school fund. It was true that Massachusetts and Rhode Island had no school funds, but had fine schools; but in those states individuals had by gifts made up for the lack of a school fund. This speaker showed with considerable clearness the inadequacy of the sixteenth section grant. There were in 1848 in the Territory of Wisconsin 52,000 school children. According to New York statistics two-thirds of the cost of educating them would amount to $80,000 a year, which was $10,000 in excess of the yield (estimated liberally) of the sixteenth section grant, even if such yield were available. It was not immediately available and before it would become so, the population of the state would have greatly increased. The necessity of normal schools was pointed out. Another valid objection to the Lovell plan was made. The plan of distributing the proceeds of the funds in question among the counties would necessitate their passing through so many agencies that waste would be inevitable, and furthermore such a distribution would become a part of a system of political favoritism. Ohio was declared to be a warning example of the folly of such a disposition of the bounty of Congress.[13]

Other speeches indicated that the provision in the first constitution for the application to education of the funds in question had met with the approval of the people.

At a subsequent session the Sanders amendment was taken from the table and the whole question of internal improvements was gone over again.* Mr. Gale, the first speaker, deprecated any provision in the constitution that "would allow our state

[13] *Journal of the Constitutional Convention*, 235.

*The Sanders Amendment.

Sec. 1. This state shall encourage internal improvements by individual associations and corporations; but shall not carry on or be a party in carrying on any work of internal improvement except in cases authorized in this article.

Sec. 2. The legislature shall have power at a regular session to pass laws authorizing the improvement of the navigable waters leading into the Mississippi or Lake Michigan, and the carrying places between the same: Provided, however, that the legislature shall not pass more than one act at the same

to plunge into the gulf of internal improvements, which had swallowed up the credit and prosperity of so many of our sister states." The state, it was declared, could not carry out such improvements as economically as could individuals or joint stock companies. The splendid public works of the state of New York had cost twice as much as they would have cost if they had been constructed by private capital. Legislation on internal improvements had alone cost the Empire State thousands of dollars. Other arguments were advanced showing that with a referendum clause a majority might burden a minority with the cost of internal improvements from which the latter might derive no benefits.[14] The Sanders amendment was lost by a vote of 54 to 9.[15]

The defeat of the Sanders amendment settled it in so far as the constitutional convention was concerned and the vote of the people settled it finally, that Wisconsin was to enter upon no public improvements except in cases in which Congress granted lands for certain specific works of that nature. The legislature of 1905, however, adopted a joint resolution to amend the internal improvements section, which is section 10, article VIII of the Constitution, by adding, "provided that the state may appropriate money in the treasury or to be hereafter raised by taxation for the construction or improvement of public highways."[16] The five hundred thousand acre grant and the five per cent fund were dedicated to the cause of education. Section 2, Article X of the Constitution providing for a school fund reads, "The proceeds of all lands that have been or hereafter may be

session, and such law shall embrace no more than one subject of improvement, which shall be singly and specifically stated therein.

Sec. 3. Every such law shall impose and provide for the collection of a direct annual tax to pay and sufficient to pay the interest on the debt that may be incurred by such work, as fast as the same shall fall due and also to pay and discharge the principal of such debt within 15 years from the time of the contracting thereof.

Sec. 4. On the final passage of such a law the ayes and noes shall be taken and before such a law shall become effective it must receive the sanction of a majority of the voters at a general election.

The money received from the sale of bonds for such a work shall be applied to that work and to nothing else.

The aggregate debt for internal improvements shall not at any time exceed $300,000. *Journal of the Constitutional Convention*, 207, 208.

[14] *Journal of the Constitutional Convention*, 347.

[15] Ibid., 352.

[16] *Laws of 1905*, 901. Ratified by legislature of 1907.

granted by the United States to this state for educational purposes (except the lands heretofore granted for the purposes of a university) and all moneys, and the clear proceeds of all property that may accrue to the state by forfeiture or escheat, and all moneys which may be paid as an equivalent for exemption from military duty and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are not specified, and the five hundred thousand acres of land to which the state is entitled by the provisions of an act of Congress entitled 'An act to appropriate the proceeds of the sale of public lands and to grant preemption rights, approved the fourth day of September, one thousand eight hundred and forty-one,' and also the five per centum of the net proceeds of the public lands to which the state shall become entitled on her admission to the Union (if Congress shall consent to such appropriation of the two grants last mentioned) shall be set apart as a separate fund, to be called the school fund, the interest of which, and all other revenues derived from the school lands shall be exclusively applied to the following objects, to-wit:

1. To the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor,

2. The residue shall be appropriated to the support and maintenance of academies and normal schools, and the purchase of suitable libraries and apparatus therefor."

Sections 3, 4, 5 and 8 make the following provisions. It is incumbent upon the legislature to establish district schools. Towns and cities are obliged to raise by taxation at least one-half of the amount received from the school fund. The income of the school fund is apportioned among the towns and cities in proportion to the number of persons between the ages of four and twenty years in each town or city. When school or university land is sold on contract the board of school land commissioners, who are the secretary of state, state treasurer, and attorney-general, is obliged by the constitution to take a mortgage on the property at seven per cent. The school and university

funds are to be invested as the legislature provides and directs.

Congress consented to the dedication of the five hundred thousand acre tract and the five per cent fund to education, and so Wisconsin began business as a State, June 7, 1848, with a magnificent school endowment. In the chapters on the administration of the Trust Funds and the sale and management of State Lands it is shown how shamefully that splendid endowment was impaired and wasted.

II. The Rule of Uniformity and Supreme Court Decisions in Relation Thereto

The Constitution of the State of Wisconsin, as has been shown, requires that the rule of taxation shall be uniform and that taxes shall be levied upon such property as the legislature shall prescribe. The meaning of this requirement has been the subject of much controversy. The question has been raised again and again as to whether the rule of uniformity allows the taxation of the property of railroads, banks, insurance companies, etc., in a manner different from the one in accordance with which other property is taxed. It has been questioned, too, whether the taxation clause allows the exemption of certain property from taxation. Most of the discussion and agitation has had reference to the uniformity part of the clause, but the question has been raised also as to whether the provision that taxes shall be levied on property precludes a tax on receipts.

The history of the uniformity clause in the constitutional convention shows very clearly, even if the word uniform itself did not so indicate, that the purpose of the rule of uniformity is to secure equality in taxation. The crucial question is, does a rule requiring equality preclude classification of property for purposes of taxation. Before tracing the history of the rule in the Wisconsin courts it may be well worth while to dwell briefly upon the interpretation placed by the Federal Supreme Court upon that clause of the fourteenth amendment to the Constitution of the United States that guarantees equal protection of the laws, in as far as the clause relates to taxation. The

Federal Court has held that the equality rule does not prohibit classification, that classification is permissible under the rule so long as it is reasonable and the taxes levied are uniform and equal with respect to the same class of persons. In the case of *Bell's Gap Railroad Company vs. Pennsylvania* the Court declared valid a law of Pennsylvania subjecting all moneyed securities to a tax of three mills on their actual value, except bonds and other securities issued by corporations, which bonds etc., were taxable at the rate of three mills on their par or nominal value. This classification appeared reasonable to the Court as there was no discrimination with respect to persons of the same class. In the Illinois Anti-Trust Law case the Court said, "the guarantee of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws as that which is enjoyed by other persons or other classes in the same place and in like circumstances." Equality demands like treatment of persons in the same class. It forbids classification only when classifications are arbitrary and unjust and work unlike treatment of like persons or classes. The Illinois inheritance tax law which provides for discriminating progressive rates graduated according to degree of relationship and amounts inherited was upheld by the Supreme Court of the United States, on the ground that the rule of equal protection of the laws requires merely that all persons shall be treated alike under like circumstances and in like conditions, both in the matter of privileges granted and liabilities imposed. Some of the state courts have taken the same view of the requirement of equality and uniformity. The right of the states to exempt property from taxation is subject to the same rule of reasonableness and equality.[17]

In June, 1855, one year after the enactment of the law providing for a gross receipts tax on railroads and plank roads, the question of uniformity first came before the Wisconsin Courts, in the suit of the Milwaukee and Mississippi Railroad Company to restrain the Supervisors of Waukesha County from collecting a tax levied on the property of the company in that county.

[17] Judson, *The Taxing Power; State and Federal in the United States*, 558 et seq.

The company contended that the local tax was illegal as the gross receipts tax was in lieu of all other taxes. The county declared the gross receipts tax unconstitutional as in violation of the rule of uniformity, and for three reasons:

(1) it established a rule of taxation on railroad and plank road property different from the rule applicable to other property, since it was a tax on income and not on property,

(2) it levied a state tax and exempted from town, county and district taxes, while other property paid all four,

(3) it established a new mode of levying taxes different from the general rule.

The finding of the Circuit Court for the railroad company was sound legally and economically, but its reasons for its finding were unique. The court based its decision in the main on the second clause of the taxation section of the Constitution, which, as will be recalled, reads, "Taxes shall be levied on such property as the legislature shall prescribe." The second clause was held to qualify the first which provides that "the rule of taxation shall be uniform." The legislature was declared to be vested with the absolute power of declaring what property should be subject to taxation and what not, a power which had been exercised from the beginning of the State Government. By virtue of this power, large amounts of real and personal property had been exempted from taxation; to wit, all the property of the United States and of the states, all the property of the several counties, cities, villages, towns and school districts, used or intended to be used for corporate purposes, personal property exempt from execution to the amount of $200, the personal property of all incorporated literary, benevolent, charitable and scientific institutions, and all real estate belonging to them and actually used for the purposes for which these institutions had been incorporated, also church property, cemeteries, public libraries, etc. The clause declaring that taxes should be levied upon *such property as the legislature should prescribe* very clearly gave to that body the right to exempt property from taxation. The Court held therefore that railroads and plank roads might be exempted wholly or partly. In the opinion of the Court they were exempted wholly; their

annual payment to the state was *not a tax*, but *a bonus* or *compensation* for exemption. The Court said, "The whole substance and effect of the law is to release these companies absolutely from all ordinary taxes for ordinary purposes, upon the condition of an annual payment to the State." It was argued that if the state had exempted the property of the companies from ordinary taxation in consideration of their performing some service to the state, such as carrying troops or public stores free of charge no one would have called the service a tax or questioned the validity of the exemption. This part of the decision was in refutation of the charge that the gross receipts tax was invalid, since it was not a tax on property. With respect to the rule of uniformity the Court held that the rule was not violated by the gross receipts tax law because under that law all within the same class were treated alike. The second part of the clause requiring that taxes be levied on property was not violated because the gross receipts tax was not really a tax but merely a bonus paid for exemption. The Court certainly put a sound construction on the uniformity rule, but it is not clear to the writer that the bonus argument was either strong, or necessary to the justification of the tax under the property clause. In this connection two points are clear; first, the gross receipts tax amounted to a partial rather than a total exemption, second, the legislature in enacting the law had in mind a preferential taxation of railroad property, using receipts as the index to the value of such property. A tax on a lawyer's or a physician's income would not be a tax on property, but a tax on the income of a railroad may justly be regarded as a tax on property, since such an income is derived from the employment of property. Two considerations induced the legislature to enact the gross receipts tax law; first, local assessment of railroad property was very inequitable, second, in order that the resources of the state might be developed and its prosperity promoted, it was deemed desirable to tax railroad property preferentially, or in other words to exempt such property in part. The gross receipts tax was adopted because income seemed to be the fairest measure of the value of a railroad's property.

The written opinion of the Supreme Court, which opinion was never filed and was discovered only after several years, upholds the decision of the lower court. In their appeal to the Supreme Court, the defendants, the Supervisors of Waukesha County, advanced another reason for the unconstitutionality of the gross receipts law, namely, that the yeas and nays had not been called on the bill, and that there was no entry in the journal to show that there had been present a quorum of three-fifths at the time when the bill was voted upon. The Supreme Court disallowed this claim of unconstitutionality, holding that the law of 1854 did not impose a tax within the constitutional meaning of the term.[18] This was very poor law and worse economics. The law of 1854 did certainly provide for a tax, and the suspicion is not without foundation that the railroad and plank road companies were responsible for its illegal enactment.

The question of uniformity next came before the Supreme Court in 1859, in the case of *Knowlton vs. the Supervisors of Rock County*.[19] Knowlton brought suit to have set aside the tax levied for 1854 in the City of Janesville. He contended that such tax was in violation of the rule of uniformity, since it was levied in accordance with a charter provison that agricultural lands within the territorial limits of the city should not be taxed more than one-half of one per cent for general city purposes, and for the support of the poor, repair and construction of roads and bridges at not more than one-half of the rate levied for such purposes on property within the recorded plat of the village of Janesville or in additions thereto. In the year 1854 the tax for current expenses had been on city property one per cent.

A majority of the court held that such discriminations in favor of the agricultural land were in violation of the rule of uniformity. The Court denied the right of the legislature to classify property as had been done in this case. It was held that the recognition of such a right would lead to an infinitude of classification that would make equality impossible. The

[18] *Reports of Wisconsin Supreme Court*, IX, 399–420.
[19] Ibid., 410.

argument advanced by the defendants that the clause in the constitution giving the legislature the right to declare what property should be taxed carried with it the right to exempt in whole or in part, the Court disposed of by showing that as soon as the legislature declares a specific kind of property to be taxable, the rule of uniformity becomes operative with respect to that property. Much stress was laid by the court upon the fact, so declared, that both classes of property received equal benefits and should therefore bear equal burdens.

The dissenting judge maintained that the legislature might classify property, and that if the classification of lands in Janesville according to their use was unconstitutional, the gross receipts tax on railroads and the bank tax must be unconstitutional, also the exemption of personal property to the amount of two hundred dollars, and that the court was reversing the decision reached in the Waukesha County case. In conclusion he said, "The section consists of two clauses, which operate upon and control each other. The legislature designates the kind, class or description of property upon which the taxes are to be levied, under the latter clause, and then the first clause of the section prescribes that the tax shall be levied upon the property so designated by a uniform law. . . . If the object and scope of the section were to produce equality, [he evidently meant such equality as precludes classification] the legislature should have been restrained from exercising any discretion in prescribing upon what property taxes should be laid." It should be noted that while the decision in this case denied the constitutionality of a certain kind of classification, it was not in conflict with the decision in the Waukesha case, since in that case the court held that the gross receipts tax was not a tax in the constitutional meaning of the term.

In 1860, however, in the case of the *Attorney-General vs. The Winnebago Lake and Fox River Plank Road Company*, the Court took another view of the tax.[20] In this case the Attorney-General brought suit against the company because the latter had failed for two years either to make a report of its

[20] *11 Wisconsin*, 35.

gross earnings as required by the law of 1854 or to pay its gross receipts tax. A majority of the Court held that "uniformity" meant equality and equality precluded classification. It was contended that the construction of the constitution that construed the uniformity clause as requiring uniformity only within a class would only prevent a part of a class from combining against the rest of the same class, an evil not likely to arise, while it would leave the way open for the combination of one class of property owners against the other classes, an evil that was always imminent, and against which it was the evident purpose of the framers of the constitution to guard. The Court declared that its construction on the rule of uniformity as securing equality secured as nearly as could be justice in the apportionment of the burdens of taxation, while the other construction seemed to regard the constitutional clause in question as designed "only to secure a sort of ornamental uniformity in the parts of an unequal rule, without affording any substantial benefit or protection."[21]

The Court in this case of 1860 rejected the argument made by the Court in 1855 in the Waukesha case, namely, that the law of 1854 provided for not a tax but a bonus paid for exemption. The payment prescribed in the Act of 1854 did not meet the requirements of a bonus, as laid down in the case of the *Mayor of Baltimore vs. the Baltimore and Ohio Railroad Company* (66 Gill., 291–2), in which case a bonus was defined as a consideration required by the legislature for the grant of a franchise, while a tax is something levied upon the franchise or its value after it is granted. A bonus is an element in a proposal offered by the legislature, which proposal may be accepted or declined by the parties to whom it is offered, whereas a tax is absolute and imperative and gives no option to the payer. It is clear that the payment required by the Act of 1854 was not a bonus, neither could it be a license, since its payment did not legalize something that could not be done unless so legalized, and since the primary object of the law was not police regulation but the raising of revenue. This payment might be

[21] *11 Wisconsin*, 37–41.

construed as a license granting exemption, but such a license would have no warrant in the constitution. The payment could certainly not have been a bonus for charters granted prior to the passage of the Act, and it is clear that it was not intended as such with respect to charters to be granted. Furthermore, the presumption was that the payment was a tax, since it was so called in the law. Thus in 1860 the highest court in the state denied the right of the legislature to classify property for purposes of taxation, and so declared the gross receipts tax on railroads unconstitutional.

The rule of *stare decisis* argued by the state was held to be of no force in this case. The probable social inexpediency as well as lack of fairness in taxing railroads and plank roads in the places through which they run was recognized by the Court, but the remedy was declared to be in the exemption of such parts as might seem advisable, leaving the remainder, if any, to be taxed by the uniform rule by which all other property was taxed.

As in the Knowlton case, Justice Cole again dissented from the opinion of the majority of the Court. Citing the Waukesha case, he expressed the opinion that it would be difficult to frame a law that would subject railroad and plank road property to the same mode of assessment and taxation in the various towns as was applied to other property, the administration of which law would not be characterized by much fraud and injustice. His argument, which was substantially the same as in the former case, may be summed up thus. If the legislature may, on the ground of public or social expediency, exempt railroad property, it may on the same ground prescribe a tax of one per cent on gross receipts, in lieu of all other taxes. The greater power includes the less. In imposing taxes the legislature, without violating the rule of uniformity, may classify property, as long as the same class of property is subject to the same rule of taxation throughout the district or jurisdiction for which the tax is raised. The power given the legislature to designate what property shall be taxed carries with it the power of exemption and classification.

The only effect of the decision of 1860 against the gross re-

ceipts tax was the enactment of a new law in which the term license was used instead of the term tax, and under this new law, which was the old law, changed as just indicated, the tax continued to be illegally collected until in 1862 the matter again came before the Supreme Court in the case of *Kneeland vs. the City of Milwaukee* and the validity of the gross receipts tax was put beyond question.[22] A majority of the Court, however, declared for the tax only on the ground of *stare decisis,* and it was only on a rehearing that this decision was reached. The Kneeland case turned clearly upon the question as to what the uniformity clause in the constitution means. Kneeland brought suit to restrain the issuance of tax deeds for certain pieces of property that the City of Milwaukee had sold for unpaid taxes. The ground of his plea was that the taxes levied in the City of Milwaukee for the years 1857, 1858 and 1859 were invalid, since the assessors had omitted from the assessment rolls certain real estate situated in that city. The city contended that all the property intentionally omitted belonged to railroad companies, the City and County of Milwaukee, and to literary, benevolent, charitable and scientific institutions, to churches, etc., all of which property was exempted by law. The facts were found to be substantially as the city represented them to be, consequently the case turned upon the meaning of the uniformity clause. The case was fought out entirely with reference to the validity of the gross receipts tax on railroads, which tax a majority of the Court held to be in violation of the rule of uniformity. The Court, however, felt bound by the Waukesha decision of 1855, since all the taxation of the state subsequent to 1854, and all private transactions related in any way to the taxation of railroads had been carried out upon the assumption that the railroad tax was valid. In view of the disastrous consequences that would have followed the overturning of the decision of 1855, the Court concluded on a rehearing that the decision in the Waukesha case should be abided by. The error made by the Court in 1855 was declared to have been so wrought into the texture of the Constitution, had so long con-

[22] *15 Wisconsin,* 454.

stituted the ground work and substratum of practice in taxation, and been so interwoven into the financial affairs of the state and of many private persons that it seemed that the error should have the force of law. Thus in 1862 the gross receipts tax was upheld on the ground of *stare decisis*.

Whatever may have been the motives of the Court, and we have no reason to question them, it is certainly to be commended for taking this high, broad, social ground rather than a narrow legal one. A decision against the law of 1854 would have invalidated all state taxes levied between 1854 and 1862, and would, as the Court declared, have wrought great confusion. To the writer, however, it seems that the Court retrogressed in finding the gross receipts tax in conflict with the rule of uniformity, which certainly does not prohibit reasonable classifications. Furthermore, it cannot be said that the tax was in violation of the second part of the taxation clause, which part declares that taxes shall be on property, for the gross receipts tax constituted but an indirect way of taxing property. It is admitted that such a tax works a different treatment of the payer than does a direct property tax, but the demands of expediency and fairness required the indirect method. The difficulty with the Wisconsin Court in this case was the difficulty that too often still affects our courts, the failure to see that the law should be progressive, that a strict interpretation of it should yield to the demands of social expediency.

It is recognized and admitted by the writer that in some states gross earnings taxes have been declared to be not property taxes, but the decisions of the federal Supreme Court and the conditions that obtained in Wisconsin at the time of its adoption of the gross earnings tax leave no doubt in the mind of the writer that the Wisconsin tax was substantially and to all intents and purposes a tax on property. In the case of the Philadelphia and Reading Railroad Company vs. Pennsylvania, the Supreme Court of the United States interpreted in two ways the gross earnings tax. In one part of its decisions the Court declared such a tax to be one on franchise; in another part it was held to be a tax on property. The Court said, "The tax is not levied, and indeed such a tax cannot be, until

the expiration of each half year and until the money received from freights and from other sources has actually come into the hands of the company. Then it has lost its distinctive character as freight earned, by having become incorporated in the general mass of the company's property."[23] Hence a tax on receipts is a tax on a part of the property of the company taxed. This construction, however, seems considerably strained, nor is it essential to the proof that the gross receipts tax is a property tax. In the first part of its decision in the Philadelphia and Reading case the Court held the tax to be a franchise tax, and as is well known the Court in the State Railroad Tax cases decided that franchises are property.[24] As might be expected, since the Supreme Court has so decided, and since it is clear that franchises are property, many state courts have decided likewise.*

However, while granting that the Wisconsin tax was a tax on franchise and therefore on property, those opposed to the idea that the Wisconsin tax was a tax on property, might urge that while the state had a right to impose this tax as a condition upon which foreign railroads might do business in the state, and also upon domestic companies incorporated after the adoption of the gross receipts tax, it had no right to place this condition upon domestic companies chartered prior to the adoption of the tax. Let us see if this is so. In 1854 and prior thereto the railroads in Wisconsin were taxed locally on their property and they suffered from the injustice that is bound to arise when an attempt is made to tax railroad property as property in general is taxed. The gross receipts tax was a great concession to the railroads; it decreased their taxes; it has always appealed to them; they have always in Wisconsin and are still fighting for it. Consequently, if the gross receipts tax law modified the charters of the Wisconsin roads in existence in 1854, it did so in a way favorable to the roads; nor can it be said that the

[23] *15 Wallace*, 284. Cited by F. J. Goodnow: *Taxation of Railway Gross Receipts* in *Political Science Quarterly*, IX, 233.

[24] *92 U. S.* 575.

* In a recent case Chief Justice Cassoday declared that the gross earnings taxed were property of the companies. *State of Wisconsin vs. Chicago and Northwestern Railroad Co.*, June 21, 1906.

legislature violated its public trust in providing for a gross earnings tax, for justice to the railroads demanded the abandonment of the local taxation of their property, and the interests of the public demanded such an extension, expansion and promotion of railways as it was hoped a preferential tax would assist. In 1854 the legislature, therefore, in order to do justice to the railroads and to promote the development of the state, exempted from taxation all other property of its railroads and placed a tax on their franchises, on a part of their property.

In 1881, in the case of the *Wisconsin Central Railroad Company vs. Taylor County et al.*, the Wisconsin Supreme Court took more advanced ground than prior to that year. In upholding the decision of 1855, the Court declared that the clause prescribing uniformity was merely a qualification of the clause that declares that taxes shall be levied upon such property as the legislature may prescribe. The legislature has the power to prescribe what property shall be taxed, and also to determine the rules by which it shall be taxed. While the language of the Court is not as clear as might be desired, it is fairly evident that in this case it was held that the Constitution allows a classification of property by the legislature, that the rule of uniformity demands no more than that all in the same class shall be treated alike, and that the classification be reasonable.[25]

The rule of uniformity has been discussed so far mainly with reference to the gross receipts tax on railroads and plank roads. The methods of taxation applied to many other kinds of property have also been tested by this rule. The finding of the State Supreme Court with respect to bank taxation is very interesting and exceedingly important. The decisions of the Court in the cases of *Knowlton vs. the Supervisors of Rock County* (the Janesville case) and of the *Attorney-General vs. the Winnebago Lake and Fox River Plank Road Company*, in which the Court had decided that the rule of uniformity required that all property taxed should be taxed equally and according to its just and true value, made questionable the validity of the law taxing banks on their shares of stock. The

[25] *52 Wisconsin*, 37.

matter came before the Court in 1860 in the case of the *State ex. rel. Reedsburg Bank vs. Hastings,* an amicable case brought into court in order that the validity of the bank tax law might be tested.[26] The case grew out of the retention by Hastings, who was State Treasurer, of certain bonds deposited with him by the Reedsburg Bank to secure its note circulation, which bonds were withheld to satisfy the unpaid taxes of the bank. It would seem that if the gross receipts tax on railroads were unconstitutional the bank tax also must be so, since it differed from the tax levied on property in general. The Court, however, decided otherwise, upholding the contention of the respondent, Treasurer Hastings, that the enactment of the bank tax law was not an ordinary act of the legislature, not an exercise of the general taxing power of that body, which power the uniformity clause was designed to limit, but that the enactment of the bank law was a kind of legislative act of the people, passed and adopted by them in their primary capacity, and in pursuance of a power reserved to them by the Constitution itself, and hence not subject to the constitutional restraints that were designed and intended to limit and control the action of the people's representatives, the legislature. It should be explained that the Constitution left to the people the question of banks or no banks, by providing that a banking act passed by the legislature should become law only when ratified by popular vote. The Court declared that the bank tax law emanated from the same source as the Constitution, and was therefore little inferior in dignity and importance to that instrument. The people reserved to themselves the power of legislating with respect to banks, and the silence of the Constitution on the subject, except with respect to this reservation, makes this power of the people free and unrestricted. The manner in which banks may be taxed in Wisconsin is in no way restricted or qualified by the constitutional rule limiting the taxing powers of the legislature.

There remains to be considered the question as to whether local assessments are in controvention of the rule of uniformity.

[26] *12 Wisconsin,* 47.

This question as to whether assessments for local street improvements are in violation of the constitutional rule of uniformity came before the Supreme Court of the State in 1860, in the case of *Weeks vs. the City of Milwaukee et al.*[27] The Court declared, in this case, that if such assessments are to be sustained at all, they must be regarded as taxes and their levy as an exercise of the taxing power, for, if the theory that they are not taxes be carried to its logical conclusion, such assessments must constitute an appropriation of private property to public use without compensation, and hence they would be invalid. It was held that while they are essentially taxes, their authorization lies outside of the general taxation clause of the Constitution, and hence they are not subject to the rule of uniformity. The warrant for local assessments the Court declared to be found in section 3, article XI of the Constitution, which section reads as follows: "It shall be the duty of the legislature, and they are hereby empowered to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, *assessment,* contracting debts, and loaning their credit, so as to prevent abuses in *assessments* and taxation, and in contracting debts by such municipal corporations." It is clear from the concurrent use in this section of the terms taxation and assessment that assessment means something different from taxation in general. Because of the long established use of the term assessments to designate a tax supposed to be levied for special benefits accruing to the payer, we cannot escape the conclusion that the framers of the Constitution so used it. Furthermore, it is not reasonable to suppose that the term assessments was used in apposition with the term taxation, because the former when used in reference to taxation is never used alone, but always in such a phrase as the assessment of taxes. The same decision had been reached in Ohio.[28]

In the inheritance tax case of *Nunnemacher vs. the State,* decided June 21, 1906, the Supreme Court of the State held

[27] *10 Wisconsin,* 242.

[28] *4 Ohio Statutes,* 243.

The rule of uniformity in relation to inheritance taxes and the ad valorem tax on railroads is discussed in the chapters on *Inheritance Taxes* and *Railroad Taxation.*

that the Constitution does not confine taxation to taxes on property, that the provision that taxes shall be upon such property as the legislature shall prescribe means merely that the legislature may determine what property shall be taxed and what exempted[a]. According to this decision and another noted in the footnote the gross receipts tax on railroads was not a property tax.

III. Popular Interpretations of the Rule of Uniformity

The history of popular agitation in Wisconsin respecting the rule of uniformity centers about the years 1879 and 1880. The general business depression experienced by Wisconsin in 1879 resulted, as was inevitable, in a falling of property values, which fall in turn induced a flood of protests against special forms of taxation and against the exemption of certain kinds of property. In various parts of the state in the closing days of 1879 and the early part of 1880 the policy and the right of exempting from taxation any but public property was being agitated with much vigor, and arguments were being made to show that all classes of property should contribute equally to the support of the government that protected them equally.[29] Under date of December 22, 1879, a committee representing the City of Milwaukee drew up a memorial entitled: "Memorial of Citizens' Committee of Milwaukee, December 22, 1879, to the people, the press, and the legislature of Wisconsin."[30] This memorial was a plea for "Universal Equal Taxation," and a protest against exemptions and different rules of taxation for different classes of property. The gross receipts tax on railroads was declared to be exceptional and therefore in violation of the rule of uniformity. Railroads were taxed according to their productivity; other property was taxed whether productive or not. If railroads were taxed on earnings, why not other property also, was asked? If the railroads

[a] Vide XII, also *State of Wisconsin vs. the Chicago and Northwestern Railroad Co.* decided June 21, 1906.

[29] *Governor's Message*, 1880, 6.

[30] *Wisconsin Miscellaneous Pamphlets* XXVIII, No. 7.

paid less under the gross receipts tax law than they would on an ad valorem basis, the gross receipts tax law worked injustice to other property; if they paid the same or more, they could not reasonably object to the change demanded by "universal equal taxation." It was declared that in view of the prevailing tendencies of public opinion and the temper of the people, it would not conduce to the interests of the railroads to in any way oppose "universal equal taxation, which, in view of the principles of justice and right, material progress, moral and religious advancement, the general good, the most perfect security and concord under the constitution and the laws demanded."

The tax on life insurance companies was also assailed. It was asserted that under the specious pretext of seeking charity for widows and orphans, life insurance companies and like institutions were in the habit of appearing before the state legislature "with mendicant whine and snivel" urging their claims to special consideration in the distribution of the burdens of taxation. Their "ubiquitous agents" were declared to be employed in creating a public sentiment in their behalf, by working upon the minds of their numerous policy holders, against the principle of "universal equal taxation," at least in so far as it applied to insurance companies. The method employed in taxing such companies was declared to be fostering and encouraging "this peculiar but useful means of private saving" at the expense of multitudinous industries and of the toiling masses. Only recently the writer heard a similar argument made by a Wisconsin legislator, who declared that preferential taxation of insurance companies amounts to a discrimination against those who because of physical disability or infirmity cannot invest in life insurance. While attacking the insurance tax so vigorously, the citizens of Milwaukee acknowledged very frankly that the wide-spread character of the insurance business and the employment of dissimilar and unequal methods of taxation in the different states makes it impossible for the state to deal with the insurance companies on the basis of uniform and equal taxation, without the aid of Congress, for which aid it was recommended that the state should ask.

These citizens of Milwaukee and also many others protested vigorously against the exemption of church property. So considerable was the sentiment at this time against the exemption of such property that even a church paper, the *Christian Statesman*, came out against it.[31] In the issue of that paper dated January 8, 1880, its editor, in a vigorous editorial protesting against many exemptions of private property and declaring such exemptions and different rules of taxation for different classes of property to be in contravention of the constitutional rule of uniformity, affirmed that the exemption of church property contravened not only that rule but also Article I, Section 18 of the Wisconsin Declaration of Rights, which section guarantees freedom of worship and freedom from involuntary support of any church or minister. The editor maintained that the exemption of religious property was becoming more and more a cause of irritation and of hostility to religion itself and that "the devout, just and patriotic of every religious faith were no longer willing to enjoy the advantages of their churches and the blessings and consolations of religion at the expense of tax payers." This editorial was inspired by a narrow conception of the benefit theory of taxation. The writer of it admitted the social service of the church, but his complete lack of the social utility point of view precluded his seeing any difference between exempting churches and exempting all manufactories.

A very unique argument in favor of the exemption of church property is to be found in a letter that appeared in the *State Journal* for January 24, 1880.[32] The writer took the ground that churches were public property and could therefore be exempted as other public property is. This individual was evidently as far afield as the writer in the *Christian Statesman*. He contended that to tax church property would amount to an infringement upon "the right of every man to worship Almighty God according to the dictates of his own conscience." The absurdity of such an argument is obvious. It would be just as reasonable to contend that taxation of factories constituted an unwarranted infringement upon industrial freedom. The true

[31] *Wisconsin Miscellaneous Pamphlets*, XI.
[32] Ibid.

argument for the exemption of church property is that churches perform a social service and that such exemption encourages an increase and growth of such institutions which even the most skeptical infidel, if he be intelligent, must acknowlege to be a mighty force for law, order and social uplifting.

The argument that the exempting of church property from taxation constitutes a violation of the clause in the Declaration of Rights insuring all persons against compulsory support of a church is obviously invalid. The purpose of the clause is obviously to prevent compulsory support of a particular church, whereas an exemption of church property in general compels the tax payer to contribute, and only indirectly and to a slight extent, to all churches. There is no discrimination between sects or churches. Social utility justifies the exemption of church property, provided that such property is used for church purposes and is necessary to such use. A tax payer might just as reasonably claim exemption from taxation for police purposes, because he has never had anyone arrested, as to contend that he ought not to be forced to contribute to the support of churches, through their exemption, since he never attended services. Whether he attends services or not, the church renders him a service by rendering a service to society, of which he is a member. There is, however, much to be considered in the argument that as many churches are frequented by the wealthy the exemption of church property increases the burdens of the poor. It may be desirable to tax churches above a certain size and value, but the constitutionality of such a tax is extremely doubtful.

The Senate committee to which were referred the memorials to the Legislature asking that church property be taxed reported in favor of a continuation of the church property exemption.[88] The committee held first of all that churches benefit society to the full amount of the taxes that would be levied upon them, and that they contribute more to preserving order, enforcing law, and defending right than do police courts and penitentiaries; secondly, the committee contended that church property should not be taxed, because as such it has no exchangeable value,

[88] *Senate Journal 1880*, 287; also *Wisconsin Miscellaneous Pamphlets*, XIV.

and if it were converted into productive property, the aggregate taxable value of the property in any district would not be increased, since the coming into the competitive field of the church property would lessen by its value the value of all other property in the district. The argument advanced in one of the memorials that many churches were becoming too strong and ought to be curbed by taxation, the committee very correctly declared to be weak, as the effect of a tax would be to destroy the weak churches and consequently to increase the strength and power of the strong, wealthy churches by giving them a monopoly of the field. The argument that many support and few enjoy the churches was met by pointing out that the same is just as true of public libraries. The committee observed that all support hospitals for the insane, yet all are not mad; all support public educational institutions, yet many families educate their children in private schools, while many have no children to be educated. It was acknowledged by the committee that church property not used for strictly church purposes sometimes escapes taxation in other states and possibly sometimes in Wisconsin, but it was sensibly contended that such evasion constitutes no argument against the principle of exemption. The committee very properly viewed the whole matter in the light of social utility, of public expediency.

CHAPTER III

PUBLIC DEBT AND STATE CREDIT

The Constitution of the State of Wisconsin, as has been shown in the chapter on "Finances and the Constitution;" limits the bonded or otherwise secured debt of the state to $100,000, except for purposes of military defense or war. In the very first year of the state's existence, 1848, for the purpose of defraying the expenses of the legislature, an attempt was made to negotiate a loan of $20,000 in gold and silver. The rate was not to exceed twelve per cent and the loan was to be payable in from six to twelve months according to the arrangements that the state treasurer might be able to make with lenders.[1] That officer reported, however, that he was entirely unable to float the loan, whereupon a bill was introduced providing for a loan of $10,000 from Alexander Mitchell, the proprietor of the Wisconsin Marine and Fire Insurance Company. This bill, however, met with little favor, presumably because Mitchell, as the Wisconsin Marine and Fire Insurance Company, was conducting a bank of issue contrary to law.[2] After considerable debate the issue of State Warrants drawing twelve per cent was authorized.[3] State orders continued to circulate until 1858, when the legislature by resolution directed that all orders, certificates of appropriations, and secretary of state's warrants on the treasury should be passed directly to the state treasury, and that they should be paid in the order in which they were dated, and only to the persons in whose favor they were drawn. Throughout this period of ten years, from 1848 to 1858, the expenses of the state were always in advance of the receipts, and state orders passed current

[1] *Milwaukee Sentinel*, August 15, 1848.
[2] Ibid., August 23, 1848.
[3] Ibid., August 25, 1848.

at about eighty per cent.[4] The low condition of the state's credit in the early days was due to two facts; first, to the delay in paying public debts, and second, to the practice of deferring the payment of old bills simply because they were old, and in the very early days to the additional fact that the legislature had failed to provide for a way in which the state might be sued, a matter left by the constitution to the legislature.[5] In 1849, the condition of the state's finances was very low indeed. The legislature, fearing that there was not more than enough in the treasury to pay its members, passed over the Governor's veto the so-called "hog bill" appropriating the money necessary to pay the legislators.[6] At that time the prospects of the state were said to be such that its creditors could not be paid for years.[7] In 1859 the Governor, in his message, observed that, because of overestimates of revenue and underestimates of expenses by the secretary of state, a floating debt had been accumulating gradually, year by year, notwithstanding the constitutional provisions that a deficit in any year must be made up in the year following. In the year ending September 30, 1858, there was a deficit of $70,340. The defalcation of a former State Treasurer added $32,258. Owing to the panic of 1857, the taxes were not paid in 1858, making a total deficit of $181,361.[8] The treasury, however, soon recovered from its sad conditon of 1858. At the end of the next fiscal year there was an apparent balance of $11,205, apparent, because the State Printer had a disputed claim of $38,762 against the state.

Wisconsin's first bonded debt was created in 1852, for the purpose of defraying various extraordinary expenditures, namely, for the unpaid expenses of the legislature of 1852, the appropriations made for furnishing the asylum for the blind, for the printing of the laws and journals of 1852, the debt inherited from the Territory, the keeping of prisoners, and the appropriations that might be made for a state prison. The bonds authorized, $50,000 in the aggregate, were to be of the denom-

[4] *Governor's Message 1862*, 17.
[5] *Wisconsin Argus*, March 6 and 20, 1849.
[6] *Laws of 1849*, ch. 22.
[7] *Wisconsin Argus*, March 20, 1849.
[8] *Governor's Message, 1859*, 1.

ination $1,000, payable in five years, as the constitution required, and were to bear interest at not to exceed eight per cent, payable annually, either in Wisconsin or in New York City.[9] The bonds issued at this time bore interest at eight per cent and sold at a discount of two per cent. There was considerable hue and cry at the time this loan was floated because paper money was received for the bonds. However, as the paper was paid out again at par the state sustained no loss.[10]

In 1858 for the purposes of defraying the expenses of enlarging the capitol, erecting a hospital for the insane and a house of refuge, the state floated another loan of $50,000. The bonds issued were of the denomination $1,000, were payable in five years, and bore interest at six per cent, payable semi-annually. They were not to be sold below par, and were to be paid for in coin or in the bonds of 1852 at par.[11] The bonds of 1858 were redeemed from the general fund in 1863. These two issues of bonds were the only ones made by the state prior to the creation of the Civil War Debt. It should be noted that in each case the law provides not for an annual tax levy for five years for the payment of the principal of the debt, but for a levy to be made in the year next preceding the time when the bonds should fall due.

Before we proceed to the discussion of the War Debt, it might be noted that in 1862, for the purpose of enlarging the capitol and erecting a hospital for the insane, bonds for $50,000 were sold, and in 1863 for capitol enlargement another $50,000 worth of bonds was issued. These bonds sold at par, and bore interest at six per cent, payable semi-annually.[12]

In 1861 the legislature in special session authorized a loan for public defense of not to exceed one million dollars. The bonds to be issued were to be in denominations of not less than $100 nor more than $1,000. The rate of interest was to be six per cent, payable on the first of January and of July each year, and payable in the case of bonds of denominations of $500 or more

[9] *Laws of 1852*, ch. 341.
[10] *Wisconsin Argus*, May 5, 1852.
[11] *Laws of 1858*, ch. 20.
[12] *Laws of 1862*, ch. 226; *Laws of 1863*, ch. 108: *Secretary of State's Report*, 1874, 10; ibid., 1889-90, 284.

at some bank in New York City to be designated by the state treasurer, and in the case of smaller bonds at the state treasury. Not less than 60 per cent of the amount received for the bonds was to be in gold or silver coin, but at the discretion of the bond commissioners, who were the governor, state treasurer, and the secretary of state, 40 per cent might be received in the currency of Wisconsin banks, provided, however, that the currency of no bank should be received unless it be at par, "estimating its value by the then market value of its securities on deposit with the comptroller of the currency." This provision relating to the parity of Wisconsin bank notes is a little obscure, but it evidently means that the notes of no bank were to be received for bonds unless the full legal security for them was on deposit with the bank comptroller. It was provided in the law that all wages and salaries paid to officers and soldiers out of the War Fund, to be created by the sale of these bonds, were to be in specie. The first $100,000 of the bonds was to be redeemed on July 1, 1877, and $100,000 on the first of each succeeding July until all were redeemed. The secretary of state was to levy an annual tax for the payment of the interest on the bonds, and beginning with 1877 a tax was to be levied each year to pay the principal of the bonds becoming due in that year. The law provided that the commissioners should negotiate the loan "on the most favorable terms, which in their judgment can be obtained."[13]

In the opinion of the writer the floating of the million dollar loan was a fine piece of financiering. Of course, the bond commissioners turned first to New York City, but inquiry soon revealed the fact that the bonds could be sold in that great money market only at great discount, if at all. The New York capitalists objected to the form in which the law authorizing the loan was drawn. They claimed that it was drawn in such a way as to compel sale at par.[14] As has already been noted, however, the law provided very clearly and distinctly that the commissioners

[13] *General Laws (Special Session)*, 1861, ch. 13.

[14] Hastings, Samuel D.: *The Negotiation of the State Loan*, a pamphlet. Mr. Hastings was one of the bond commissioners. His pamphlet was written shortly after the negotiation of the loan.

might contract the debt "on the most favorable terms which in their judgment can be obtained."[15] It is possible that this claim of a flaw in the law was only a pretext for offering a low price for the Wisconsin State bonds, which were in all probability discredited by the unpaid interest on Wisconsin municipal bonds and railroad bonds secured by the pledges of Wisconsin municipalities.[16] Wisconsin could hardly have gotten more than 70 for its bonds in Wall Street if, indeed, they could have been sold at all. At that time, in the New York market, United States bonds were selling at 83, Illinois bonds at 74: Michigan seven per cents, at 80; Iowa six per cents, at 70; and California six per cents, at 63.[17] The final conference of the bond commissioners was held June 25, the day after the Bank riot in Milwaukee, at a time of intense and painful excitement. A disastrous financial panic seemed imminent. Two months previous about half of the currency of the banks of the state had been discredited, and the people had lost a million dollars. A serious crisis was imminent. If the rest of the bank currency had been discredited, another million would have been lost, business would have been prostrated, the banks crippled, and the state embarrassed. The failure of the banks would have resulted in virtual bankruptcy for the state government, which had in its possession $150,000 in Wisconsin bank notes.[18] Such was the painful and critical situation, when the bond commissioners met and made such an arrangement with the Wisconsin bankers as both brought money into the state treasury and saved the banks and the business interests of the state from ruin. The bankers agreed to take at par $800,000 worth of state bonds. Seventy per cent of the amount was to be paid in cash down, and the remaining thirty per cent in installments of one per cent every six months. The corporate bond of each bank buying bonds was given to secure this thirty per cent. Sixty per cent of the amount paid down was to be specie or New York exchange; forty per cent might be in current bank bills. The

[15] *General Laws of 1861 (Special Session)*, ch. 13.
[16] Hastings; supra.
[17] Appendix, *Senate Journal, 1862*, 1143.
[18] Hasting, supra.

bonds were to be held by the Bank Comptroller as security for Wisconsin bank currency in circulation. It was agreed between the bankers and the loan commissioners that the current notes of the banks should be brought up to par by the deposit of additional securities with the comptroller. The securities then held by the comptroller, which were for the most part those of southern states, the rapid depreciation of which securities was having a baneful influence on Wisconsin currency, were to be sold by that officer in sufficient number to provide the specie payment for the Wisconsin bonds. In other words, the Wisconsin bonds were to be substituted for other bonds then furnishing an insufficient and uncertain security for Wisconsin bank notes.[19] The southern bonds sold did not yield enough by $100,000 to bring the Wisconsin currency up to par; this deficiency was supplied by the bankers and merchants of Milwaukee.[20] The plan for floating this loan of $800,000 was expeditiously carried out. On October first the comptroller in his annual report for that year stated that all the bonds had been taken and were on deposit with the state treasurer.[21] It is worthy of notice that in the year preceding this report, the stocks of southern states deposited to secure the Wisconsin bank notes in circulation had fallen from two-thirds of the total stocks deposited for that purpose to a little over one-fourth.[22] Later $116,000 worth of bonds were sold for eighty per cent in cash down and the remaining twenty per cent in half year installments of one per cent cash. The rest of the million dollar loan was made for cash and at par.[23]

In the opinion of the writer, the loan commissioners should have received general commendation for the highly creditable way in which they floated this large loan, at a time when the money market was in a most unsettled condition. The results justify this opinion. Within five years the state had realized 88 per cent on these bonds, notwithstanding that it was found in closing up some of the banks that, since the note holders had

[19] *Secretary of State's Report, 1861,* 227.
[20] Hastings, supra.
[21] *Bank Comptroller's Report, 1861,* 8.
[22] Ibid., 11.
[23] *Report of State Treasurer,* 1866, 9.

a claim prior to that of the state, there was not enough to pay the amounts due the state for the bonds. At that time, from banks in good standing there was due only $41,620. Banks failing and assigning their bonds, according to law, to the state, assigned also the benefits of their lost circulation. These two sources, it was estimated, would bring the aggregate receipts for the bonds up to 92 per cent.[24] However, the loan commissioners were vigorously assailed for the so-called diverting of the purpose of the bonds by making them security for the state bank currency. It is very clear, however, that they acted most wisely. As a defect in the loan law was charged, another session of the legislature would have been necessary before the bonds could have been sold in the east. All evidence indicates that the 70 per cent realized at once was all that could have been obtained in Wall Street. Besides, the state was reasonably certain of ultimately receiving all of the additional thirty per cent, as it was agreed between the bankers and the commissioners that the state treasurer should take the semi-annual payment on this thirty per cent out of the interest accruing on the bonds, if such payment were not made.[25] Furthermore, if the bonds had not been disposed of as they were, the expense and delay of another extra session of the legislature would have been necessary. The plan adopted kept the amount of discount in the state; relief and protection were afforded Wisconsin's business interests and her people in general, since their currency, then rapidly declining, was saved from discredit and repudiation.[26] "The sale to Wisconsin bankers saved the banks from runs, the currency from depreciation, and the state from financial distress, if not from panic."[27] The plan followed by the loan commissioners not only accomplished all this, but it furnished a fund of nearly three quarters of a million for the equipment of the militia that Wisconsin sent out to defend the Union. By October first, all but $160,500 of the million dollar issue of bonds had been sold.

Because of the proponderating importance of the million

[24] *The Commercial and Financial Chronicle, 1866.* III, 388; *Hunt's Merchant's Magazine,* IV, 283.

[25] *Bank Comptroller's Report,* 1861, 8.

[26] *Secretary of State's Report,* 1861, 228.

[27] Appendix, *Senate Journal,* 1862, 1143.

dollar bond issue, the writer has departed slightly from the chronological order in his treatment of the war debt. Wisconsin was very prompt in providing funds for putting its troops at the service of the Federal Government. By an Act approved April 13, 1861, the legislature authorized the issue of $100,000 worth of bonds provided that the President should call for troops. These bonds were to be of the denomination $1,000, payable in five years and were to bear interest at six per cent, payable semi-annually. They were not to be sold below par. By an Act approved April 16, the amount of the bonds was increased to $200,000.[28] On April 15, President Lincoln called for troops, and in May the Wisconsin legislature authorized the million dollar loan. Owing to the par clause, it was found impossible to float the $200,000 loan. Up to September 30, 1861, only twelve of these bonds had been sold.[29] Prior to January 1, 1862, owing to the unsettled state of the money market, the officers of the state found it difficult to sell bonds at par and at the same time get full payment down, but after that date no difficulty was experienced.[30]

While in all probability the difficulty just noted was due in the main, if not entirely, to the unsettled condition of the money market, Governor Harvey thought that another cause was to be found in the financial misfortunes of Wisconsin municipalities, many of which were hopelessly in debt. State Treasurer Hastings shared this belief of the Governor's. In his message of 1862, Governor Harvey spoke at some length of public debt. In his opinion the state had benefited greatly from the clause in the constitution prohibiting, except for war purposes or public defense, the contracting of a large state debt. By 1862, the state had constructed buildings for a capitol,* state prison, and humane institutions at a cost of only $773,516. These buildings had been paid for by an annual tax equal to the interest on a

[28] *Laws of 1861*, chs. 239, 307.

[29] *Secretary of State's Report*, 1861 (in section on State Loan).

[30] *Secretary of State's Report*, 1862, 903.

* The main part of the Capitol was begun in the territorial period. In 1838 Congress appropriated $20,000 for its completion, but owing to a wrong application of the funds the building remained unfinished until 1844, when the County of Dane completed it at a cost of about $2,000. *Hunt's Merchants' Magazine*, XXXIX, 64.

million dollars. He was certain that the buildings would have cost much more if they had been built with borrowed money, because of the speculative character of the times and the extravagance that characterizes the expenditure of money borrowed on public credit. The Governor declared that more than one-half of the sums spent for University buildings had been paid for interest and that the debt of the University was increasing yearly. Apropos of the recklessness of local communities in plunging into debt, Governor Harvey spoke very highly of the wisdom of the framers of the constitution in forbidding the use of state credit in the furthering of internal improvements. He said, "Had our constitution permitted the use of state credit for works of internal improvement, we can at this day scarcely form an adequate idea of the pressure of interests that would have combined to plunge the state into debt. In the past era of speculation, our people were well nigh intoxicated with their schemes of improvement in the way of building railroads, etc." As it was necessary to get credit in some way for the promotion of such enterprises, upon the cities, towns, and land owners of the state had fallen the burden that the state had escaped. It may be noted in this connection that in 1859, certain railroads in Wisconsin proposed that the constitution be so amended that the state should guarantee the city, county, and town bonds issued in aid of various railroad projects. Such bonds amounted at that time to $7,265,000.[31] If the railroads of Wisconsin could have been built with cash, no general disaster would have befallen them or their creditors, but they were built on credit, the character of which made necessary large discounts; extravagance marked the expenditure of the money obtained and private speculation among their managers completed the bankruptcy and ruin of the companies, in the failure of which municipal corporations and thousands of citizens became hopelessly involved. All the property in many cities was said to have been worth hardly their bonded debt and the unpaid interest thereon. Thousands of small farmers throughout the state were, as a result of having pledged support to railroad projects, hopelessly

[31] *The Bankers' Magazine*, 1859, 717.

in debt. These misfortunes of citizens and municipalities, the Governor thought, affected adversely the credit of the state. He very wisely recommended a constitutional limitation on the power of counties, cities, and towns to contract debts.[32]

It may be observed that in 1872 another Governor laid much stress upon the reckless loaning of public credit to railroads by local administrative bodies. Some of the most promising towns in the state, in the expectation that a proposed railroad would add largely to their business and their prosperity had loaned far beyond their ability to pay, and, instead of being in the enjoyment of the expected advantages, were buried beneath almost hopeless debt. It was recommended that towns, counties, and cities be prohibited from contracting in aid of any railroad or other public improvement a debt in excess of five per cent of the assessed value of their property.[33] The amendment of November 1874 went further and limited their aggregate debt for all purposes to five per cent of the assessed value of their property.

In 1862, the legislature authorized an additional war loan of $200,000. These bonds bore interest at six per cent, to be paid semi-annually. One half of this loan was payable July 1, 1887, and the other half, the first of the next July.[34] By another law of 1862, the commissioners of school and university lands were authorized and directed to give preference to the bonds of the state in investing the trust funds.[35] The $103,000 of war bonds remaining unsold were therefore converted into certificates of indebtedness to the school fund.

In the following year still another war loan was authorized. The governor, secretary of state, and the state treasurer were authorized to negotiate a loan of $350,000, the same to be at their discretion either in coupon bonds or in certificates of indebtedness to the school fund or in both. Another loan of $350,000 was authorized in 1864, the next year.[36] Of this $700,000, the school fund took up $605,000. Of the $850,000

[32] *Governor's Message*, 1862, 19.
[33] *Governor's Message*, 1872, 23-24.
[34] *Laws of 1862*, ch. 228.
[35] Ibid., ch. 89.
[36] *Laws of 1863*, ch. 157; *Laws of 1864*, ch. 360.

loan authorized in 1865, $623,000 came from the school fund. At the same time the school land commissioners invested $700 in outstanding state bonds; therefore, up to the end of 1865, the state had borrowed from the trust funds $1,331,700, which debt was in the form of certificates of indebtedness. In 1865 bonds to the amount of $548,800 were redeemed, leaving outstanding in the form of bonds $847,500, or a total debt of $2,179,200.

By June 1, 1866, the debt of the state to the trust funds had increased to $1,841,900 of which $478,900 had been paid for bonds and $1,363,000 for certificates of indebtedness, as provided by laws of 1863, 1864, 1865. The total amount of bonds outstanding had been reduced to $472,300. By the end of the year by redemption from the general fund the amount had been reduced to $440,100. The commissioners of school and university lands continued to invest in the bonds of the state, and in 1868 bonds to the amount of $27,000 were redeemed. By 1886 only $1,000 in bonds was outstanding and these were redeemed August 13, 1888. All of the bonds of the state had been either redeemed or converted into certificates of indebtedness to the trust funds. The total amount of this indebtedness was and is now $2,251,000.[37]

The direct war tax levied on Wisconsin and amounting to $519,688.67 was more than paid by expenditures of the state for the equipping of troops, by the fifteen per cent discount allowed for collection, by the amounts due from the five per cent land fund, and from the swamp land indemnity. The balance due the state from the National Government, the sum of $8,409.43 was paid April 25, 1888.[38]

For war purposes Wisconsin issued $1,400,000 worth of bonds, for which was received $1,110,229.69. The state taxes on account of the War amounted to $674,659.

[37] *Secretary of State's Report*, 1889-90, 283-87.
The distribution of this debt is as follows:

To School Fund	$1,563,700
To Normal School Fund	515,700
To University Fund	111,000
To Agricultural College Fund	60,600
	$2,251,000

Secretary of State's Report, 1903-04, 28.

[38] *Secretary of State's Report*, 1889-90, 283-87.

The following exhibit shows the receipts and expenditures of the War Fund.[39] No bonded debt has been contracted since the war debts were contracted.

Receipts.

Bonds sold	$1,110,229 69
Certificates of indebtedness	1,401,000 00
United States on account of advances	874,517 92
Temporary loan from general fund	195,000 00
Miscellaneous	129,631 55
Total	$4,335,038 41

Expenditures.

Military account	$ 134,187 26
Volunteer aid	2,702,703 00
Paymaster General	779,008 21
Secretary of state and treasurer as disbursing officers	238,081 61
Repayment of loan from the general fund	196,716 75
Total	$4,335,038 41

[39] Ibid., 276.

CHAPTER IV

THE ADMINISTRATION OF THE TRUST FUNDS

The trust funds of the state are the School Fund, the University Fund, the Normal School Fund, and the Agricultural College Fund. For a short time there was also a Railroad Farm Mortgage Fund. The genesis and nature of each of these funds is explained in the chapter on "The Financial Administration of the State Departments." Such colossal fraud and corruption characterized the administration of the education funds in the early years of the state's history, especially during the regime of the "Forty Thieves," which began in 1850, that the people of Wisconsin are today paying taxes for education that they would have no need of paying, if the trust funds had been honestly and efficiently administered, and if the lands serving as the basis of the funds had been disposed of with a view to promoting the welfare of the state, instead of furthering the private interests of corrupt public officers and land speculators.

The first law providing for the investment of the trust funds required that the school and university land commissioners, who were the secretary of state, state treasurer, and the attorney-general, make loans of all moneys received into the funds to the citizens of Wisconsin, upon real estate security. All moneys arising from the sale of lands in any county were to be set aside and loaned to individual citizens residing in that county. This law appears to be one that might have insured the safety and integrity of the funds, but the administration of it was so lax and corrupt that it worked great losses to the funds for education. The following are the important provisions of the law. In appraising land offered as security for loans, the commissioners were not to include perishable improvements. From the person applying for a loan the commissioners

were each to receive one dollar a day for making the required appraisal. No greater sum than $500 nor a sum less than $100 was to be loaned to any one person. The interest at seven per cent was payable annually in advance. No loan was to be made for a longer time than five years, but it was provided that the payment of the principal might be deferred from year to year even after five years, provided that the interest was paid, but the legislature might at any time change the law so as to require payment at any time after one year from the time when the original five year credit expired. The principal might be paid in whole or in part at any time when interest fell due. The sum loaned was not to exceed one-half of the appraised value of the property offered as security, and the commissioners might reduce the amount loaned on any piece of property whenever they had good cause to believe that the valuation on the property was not in proportion to the prices of similar property being sold in the neighborhood. The expense of recording the mortgage given was to be borne by the borrower. In case of non-payment of interest or of principal when due, the commissioners, after advertising the sale, were to sell at auction and for cash so much of the land as would pay the amount of the principal due, interest due, five per cent damages of the whole amount due, and the cost of advertising and selling. In case no bid sufficiently high was received, the commissioners were to bid the land in for the proper fund, and as soon thereafter as possible to sell the property to the highest bidder for cash or on five years' time. If the mortgaged property in any case was sold for more than the amount due the fund and damages and expenses, the surplus was to be paid over to the mortgagor, his heirs or assigns. This law honestly and efficiently administered would have worked satisfactorily and the integrity of the funds would have been secure.[1]

As early as 1851 complaints were made that in some instances loans were made from the school fund upon insufficient security. Governor Farwell was unable to ascertain whether these complaints had any basis in fact, but subsequent disclosures proved

[1] *Revised Statutes*, 1849, ch. 24, secs. 64-76, 89, 98.

that they had. The Governor declared against the policy of loaning the school fund to individuals, not only because of the liability to loss in many cases, but also because the policy was partial in its benefits. He advocated that the fund be used for the support of the normal school, in the benefits of which the poor and the needy might participate.[2] Just what his plan was he did not indicate. A typical case illustrating the frauds practiced in the land office was unearthed in 1852. In 1851 there was loaned from the trust funds to G. H. Barstow, brother of the then Secretary of State, the sum of $350. The mortgage given by Barstow was not recorded for ten months. The land mortgaged was assessed at $85 and it was said that it would not have brought $100 at a forced sale. Besides, judgments against Barstow for $75 and $500 took precedence of the mortgage to the school fund. A full investigation was made of this case, and records supported by affidavits show that the above were the facts.[3]

The frauds in the land office were fully revealed in 1856.* When at the begining of that year, State Treasurer Edward H. Janssen retired from office he was short in his accounts a sum variously estimated from $40,000 to $75,000, but which proved to be $34,974.[4] Various credits given to Janssen finally reduced his shortage to $31,318.54. This shortage led to the appointment of a select committee of the legislature to investigate the offices of the state treasurer, of the secretary of state, and the school land office, and to carry the investigation back to the beginning of the state government.

The school land commissioners during the administration immediately preceding 1856 were E. H. Janssen, State Treasurer, A. T. Gray, Secretary of State, and George B. Smith, Attorney-General. Daniel M. Seaver, Deputy Treasurer, was acting commissioner during Janssen's absence, which was considerable.

[2] *Governor's Message*, 1851.

[3] *Argus*, Feb. 25, 1852.

* In 1855 numerous persons complained that they could not get their claims on the State Treasury satisfied, and it was said in the legislature that the postmaster at Madison had given notice that after a certain day he would cease to give the state credit for postage stamps.

[4] *Milwaukee Sentinel*, Feb. 16, 1856.

William A. Barstow was Governor. Barstow and his ring are known in Wisconsin history as "The Forty Thieves." The disclosures of fraud in the land office lead one to believe that they deserved this title.

The legislative investigation showed the grossest frauds in connection with the sale of state lands and the administration of the trust funds. Testimony given before the committee, and evidence in the records of the school land office reveal a constant violation of the law prohibiting the commissioners and their clerks from buying state lands. It was the practice of persons in the commissioners' office to mark certain lands "sold" or "reserved for sale" thus giving themselves or their friends time to examine the lands. Entries in lead pencil showed that certain lands were reserved for certain persons. One entry read "To be kept for William A. Barstow." William A. Barstow was the Governor of the State. The law required the sale of land at auction. More light was thrown upon the shameful way in which the land office was administered by the testimony of a clerk who swore that while in March, 1855, the bill to restrict the amount of land to be sold to one person was pending, he by the direction of one of his superiors marked certain unsold lands "sold to Daniel Howell." Daniel Howell swore before the committee that he had never had any interest in the lands entered in his name. In some cases lands were actually stolen by those in the land office. In one case, W. H. Besley, chief clerk in the land office, using the name of Daniel Howell, came into possession of a whole section, which had already been sold on time and on the balance of the purchase price of which one James Ludington was paying interest. Besley secured a patent to the land, which was section 16, town 13, range 22, and he admitted before the committee that he paid nothing for it. From beginning to end this nefarious business was contrary to law. In the first place, the law required that application for the purchase of any piece of land be filed with the secretary of state. Besley had entered this land at one shilling an acre; it had already been sold for twelve shillings an acre; besides, the law fixed a minimum price of $1.25 an acre.

The whole business of the office was conducted in a grossly

careless and negligent manner and without regard to law. The law in order to prevent the issue of land certificates before the payment of the sums required by law to be paid provided that such certificates should be countersigned by the secretary of state. This provision was disregarded. It was customary for that officer, the attorney-general, and the treasurer, the land commissioners, to sign certificates in blank, which thus signed were left lying about in the office where everyone had access to them. It was the practice to deliver certificates to certain persons upon their promising to pay the Treasurer the amounts required, but no trouble was ever taken to see whether they kept their promise. Consequently, there were issued a large number of certificates upon which nothing was ever paid. This was true of many certificates issued in the names of Daniel Howell, William Chappell, and E. H. Gleason, in which certificates persons in the office had an interest. The practice of signing certificates in blank dated back to July, 1854, when the land office was separated from the Treasurer's office. These fraudulently obtained certificates were in many if not in all cases sold to bona-fide purchasers, who perhaps had no knowledge of the fraud connected with them. The traceable loss to the education funds because of these particular frauds amounted to $16,245.94. It might be explained that land certificates were receipts for the amount required to be paid down on land and for interest on the balance to the following January. Title to land sold on credit remained in the state until payment in full was made. Another loss ascertainable to the extent of $23,-678.77 arose from either the non-payment of penalties or their non-entry on the books. The law provided that persons who failed to pay interest on a loan or on money owed for school lands within the time fixed by statute should forfeit to the state five per cent of the amount due. Some cases were discovered in which the penalty had been paid, but the Treasurer's books showed no corresponding entry. The total loss to the trust funds through this and other frauds there is no means of determining.

It has already been pointed out that the clerks in the land office entered lands for themselves. One clerk, Byrne by name,

testified that he had received permission from all the commissioners to enter lands. He maintained that he had a right to enter lands and if the commissioners considered his doing so inconsistent with his holding a clerkship in the school land office, he was willing to be discharged. He continued to enter lands and was retained as clerk for more than a year. The Attorney-General had objected to Byrne's entering large quantities of land. By thus objecting he made it evident that he interpreted the law forbidding the commissioners to buy lands as applying also to their clerks. The mere entry of lands by the clerks, while it would work injustice to would-be purchasers outside of the office, would not necessarily injure the school fund, but this practice was connected with rascality in addition to that already indicated.

A certain letter written by some one in New York to Besley, the chief clerk in the land office, revealed the fact that a trade in land certificates was being carried on between the land office and some organized association or company in New York City. This letter, after it had been gained possession of by the investigating committee but before a copy of it had been made, unfortunately was allowed to fall into the hands of Besley, who refused to deliver it to the committee. However, the testimony of General William R. Smith, who had read the letter, revealed the general purport of its contents. The latter disclosed the fact that there was an organized club or company for the purpose of entering school lands or purchasing certificates in order to sell them again in New York or elsewhere. The writer of the letter was an operator for this company. The letter indicated that some person under a disguised name was in New York and another person was in Madison or was expected to go from Madison to New York. In this connection it should be recalled that the clerks in the land office had at their disposal certificates signed in blank, and that certificates were taken from the office without payments having been made for them. Furthermore, the testimony of Treasurer Janssen, substantiated by an investigation of his books, showed that money due on a great deal of land was never paid, and that the Commissioners, Smith and Gray, and the clerks in the land office were interested in

these lands. The testimony of a clerk named Frary revealed the fact that Charles I. Kane and Company of New York were agents for school land certificates and that certificates were sent to them for sale. Assistant-Treasurer Seaver testified that many certificates were signed in blank by the Commissioners, afterward filled in by the clerks, put into the market and sold just as other property. Some were sent to New York. Besley, the chief clerk, made frequent trips to that city. All this evidence proved, in the opinion of the joint committee, that an extensive business had been carried on between the school land office and some organized association outside, a business resulting in great loss to the school fund.

To just what extent the commissioners, Gray and Smith, were connected with this nefarious business is not clear, but it is reasonably certain that it was carried on with their consent. Treasurer Janssen appears to have been less culpable than his colleagues, who never conferred with him. The guilt of Janssen, who because of family misfortunes was absent from Madison for a long time, lay in his not having opposed the other commissioners and in his not having required a bond of Seaver, his deputy, who was a drunkard and a gambler.

Still another loss to the school fund arose from the repeated violation of the laws prohibiting the sale of forfeited lands at less than their original sale price. The case of George Read, of Manitowoc County, affords an instance. In 1854 he forfeited fifty-two lots and later repurchased them at $50 each. Some of these lots had originally cost him $60.

A great fraud was perpetrated on the general public and on the school fund by the many violations of the law of 1855 providing that no person should at any sale of such lands purchase more than 160 acres of school or university lands. This violation was accomplished in many cases by the use of fictitious names, the subsequent forfeiture of bids, and then purchase by application, which was allowable in cases of forfeited lands. The law was also openly violated. Another way of circumventing the law was by offering the forfeited lands at auction so early the next morning that bona-fide purchasers had no opportunity to bid.

In 1854, Seaver, who was then in charge of the treasury, as Janssen was absent from his duties, went to Milwaukee and had an interview with James Ludington, as a result of which interview Ludington made application for 57,000 acres of school lands. Testimony offered before the investigating committee tended to show that Seaver had received as a present from Ludington $2,000 worth of stock in the Bank of the West. The amount payable on Ludington's certificates was $13,845.05, which both he and his agent, George W. Chapman, swore was paid in full to the Treasurer or his deputy. The books of the Treasurer, however, accounted for only $10,189.70. N. W. Dean swore that on May 15, 1854, he paid to Seaver, the deputy treasurer, $780.10 on 1,588.69 acres of university lands. Not a dollar of this payment was credited to the university fund. Upon fifty-six patents issued for lands marked in the school land office "paid in full" the treasurer's books showed unpaid $5,900.61.

The losses through defective mortgages taken to secure loans from the funds were indeed very great. The defective and irregular mortgages numbered 119 and represented $41,896.50. The law required that the attorney-general should examine all mortgages, title papers, etc., relating to loans and should certify to the correctness of the same before the loan should be made. Some loans were made without regard to this provision and consequently some of the securities held were doubtful or even worthless. Some mortgages certified to by the attorney-general were so defective that they could not be foreclosed. In some cases no amount was stated in the note accompanying the mortgage; in other cases no amount was named in the mortgage. Some mortgages bore no seal; some were not dated. Many were left unrecorded, thus giving the mortgagor time and opportunity to alienate the mortgaged property. In one case at least this was actually done. The loan in this case was to John Nelson of Outagamie County. In some cases no mortgage was taken; in others, the same land was mortgaged to secure two loans. Many loans were of more than $500, which was contrary to law. The funds were managed with utter disregard for the law and for their safety and inviolability.

This disregard is particularly well illustrated by a transac-

tion that took place on the thirtieth of April, 1855, on which day Henry Quarles purchased from the state several parcels of land that had been mortgaged to the state and later forfeited. A patent to the land was issued to Quarles, who then executed a note for $825, the purchase price, and gave a mortgage to the state on only a part of the land, thus obtaining a clear title to a part of the lands and paying for it with the other part. Even if the intentions of Quarles had been good, what right had the commissioners to accept a mortgage on land that was obviously not worth the amount stated in the mortgage?

The losses to the funds arising from under-appraisement and haste in bringing the lands into the market will be treated in the chapter on Public Lands.

The Investigating Committee,* the results of whose thorough work have been set forth in the preceding pages, was of the opinion that under judicious, careful, and prudent management the school fund in 1856 would have been double what it was. Tens of thousands of dollars of this fund had been embezzled and hundreds of thousands lost or squandered. "Criminal negligence, wanton recklessness, and utter disregard for the most responsible duties which could be imposed upon man alone" had characterized the management of the funds.[5]

Undoubtedly, the legislature was responsible in some measure for this mismanagement and fraud, since it had not provided a department for the management of the education lands and their funds. In 1856, Governor Barstow, as had also previous governors, urged the erection of a permanent department under the control and supervision of the school land commissioners, a department for the management of the school and university funds. He declared that the other duties of the commissioners precluded their giving the time necessary to the management of these funds. In view of the disclosures made by the joint select committee, it is amusing that Barstow on the eve of the investigation declared that, notwithstanding the

* The members of the Committee were D. Taylor, P. H. Smith, and D. Worthington of the senate; William Hull, A. Grenlich, H. H. Gray, John F. Potter, and Charles Burchard of the assembly.

[5] *Report of Joint Select Committee*, 1856, in *Wisconsin Miscellaneous Pamphlets*, XXVIII.

neglect of the legislature to make adequate provision for the care of the funds, there was no evidence in all the official reports having to do with these funds that one dollar had ever been lost or squandered. The Governor made this declaration notwithstanding that in 1855 gross errors had appeared in the report of the commissioners. Apropos of the investment of the funds, this Governor, whom public opinion proclaimed the chieftain of the "Forty Thieves," declared to be idle the fear that the funds would be endangered by being loaned to the political and personal friends of the officers in charge of them, but he admitted that they were so loaned and asserted that it was inevitable that they should be.[6]

As has already been shown the funds were in this period of great fraud loaned exclusively to individuals. In 1856 a new avenue for the investment of the funds was opened up. Every union school, academy, college or university, or other school of learning was given permission to borrow from the trust funds a sum not less than $5,000 nor more than $10,000, on the credit of the town or city in which such institution might be located. The granting of such a loan was contingent upon the consent of the electors of the town or city, given at a general election. Such loans were not to exceed twenty-five per cent of the assessed value of the property in the town or city. Interest at the rate of seven per cent was to be added to the taxes of the town or city and returned as a part of the state tax.[7] When this law was repealed the next year, the *Milwaukee Sentinel* said that applications were on file from at least one institution that had no existence except in its charter and no location except on paper. The *Sentinel* declared that the repealing law loosened a "new grip" on the school fund.[8]

In 1858, the commissioners were authorized to require payment at any time after January 1, 1859, of all loans from the school or university funds or any other state fund, provided, however, that payment should not be required until one year after the original credit had expired, and provided further that

[6] *Governor's Message*, 1856, 8.
[7] *Laws of 1856*, ch. 143; *Laws of 1857*; ch. 2.
[8] *Milwaukee Sentinel*, Feb. 4, 1857.

the original credit might be extended from year to year at the discretion of the commissioners. In cases in which there appeared to be a defect in the title to the land pledged to secure a loan, the commissioners were to demand payment when due, and if their demand was not complied with they were either to close the account as provided for by law or to exact new and sufficient security. When property sold to satisfy a debt to the funds did not yield a sum sufficient to pay the principal, interest, and costs, the commissioners were to take proper steps to collect the balance from the individual personally responsible for the payment of the debt.[1]

Political strife and slander led in 1858 to another systematic investigation of the executive departments. The papers in the school and university land office were found in better order than in former years, and the securities were more uniformly in compliance with law. Defects, however, were discovered on the face of the papers and also errors that might vitiate the securities. The most serious loss ascertainable was, however, from insufficient securities. Loans had been made on village lots of little intrinsic value, on appraisals obtained from interested persons, or on valuations based on speculative prices, not obtainable in times of ordinary business prosperity. Of the lands forfeited for non-payment of interest on loans and sold in the fall of 1857, fourteen pieces, mortgaged for $6,000, had been bid in by the state, as no one else was willing to pay for them the amounts due thereon. Many if not all of these parcels were in the opinion of the investigating committee either comparatively worthless or in the hands of people having prior liens on them. It was pointed out that the fees collected by the land office instead of being turned into the treasury were appropriated by the commissioners. The expenses of the office in that year reached the considerable sum of $22,758, and $13,351 was paid for appraising lands. Evidently the economy sought after in placing the management of the education lands and funds under the management of the secretary of state, treasurer, and attorney-general was not being realized. The charges on sales

[1] *General Laws of 1858*, ch. 130.

and conveyances could be justified only on the ground that they were intended to defray the cost of appraising the land and of conducting the land office; they were going into the pockets of the commissioners.[10]

In 1860 the papers relating to loans were found to be for the most part in good order; defects, however, were found in several papers. In some cases there were no notes or mortgages to secure loans. It is possible, of course, that these missing mortgages were in the hands of registers of deeds to be recorded. If they were, however, some record should have been made of them. The attention of the investigating committee was called repeatedly to papers alleged to have been forged, but time did not permit the investigation of such cases. The committee was of the opinion that more vigilance than had up to that time been exercised in the disposing of the funds was necessary to their preservation. Of the $56,374 of securities forfeited to the state in 1859, a large proportion were worthless.[11] The condition was much improved in 1861, but was still far from satisfactory. The papers relating to loans were correct in every particular; the commissioners had used the greatest caution in examining securities offered for loans, but in some cases through the fault of the appraisers the security was insufficient. In some cases the appraisement of property securing loans from the funds was double the actual value.[12]

There is not a shadow of doubt that the system of lending the trust funds to individuals had worked great loss to the funds, yet legislature after legislature, notwithstanding the repeated recommendations of the land commissioners that the funds be invested in public securities, allowed the system to continue. In 1862, Governor Harvey observed that the management of the funds and of the lands held in trust on their account was constantly producing a decrease of the capital of the funds and was accumulating a corresponding amount of unproductive assets having fictitious values. The accounts of the funds showed much unproductive capital in the form of un-

[10] Appendix *Senate Journal*, 1858.
[11] Ibid., 1860, Document A.
[12] Appendix, *Senate Journal*, 1861.

sold and forfeited lands, entered at the legal price. In 1863, Governor Salomon also called the attention of the legislature to the fact that the productiveness of the funds was being decreased continually because of forfeitures of land. Governor Harvey declared that the practice of selling state lands on credit with a small cash payment had proved a cheat and a delusion. He urged that the practice be discontinued, except perhaps in the sale of actual farm lands in limited quantities and in good faith for immediate settlement and improvement. It was recommended that the then present system of loaning the funds be replaced by one involving less risk, less expense and promising greater safety. The land commissioners justly complained that the law compelled them to scatter large funds in small loans, in the majority of cases, to men of whose character and responsibility they knew nothing, and upon securities of the value of which they were entirely ignorant, except in so far as they were informed by appraisers of whose judgment and integrity they knew nothing. It was wisely recommended that the funds be invested in the bonds of Wisconsin or of the United States. Such a plan of investment was rightly declared to be economical, convenient, and safe. This plan has the further merit of being devoid of that pernicious element of political influence incident to the loaning of large sums of public money to the people, with its attendant temptations to favoritism and abuse for personal or partisan reasons.[13]

The Civil War opened up a new source of investment for the funds. The legislature in 1862 directed the commissioners to invest the principal of the school fund then in the treasury, with the exception of $3,000, in the state war bonds remaining unsold, in preference to all other loans and investments. These bonds bore interest at seven per cent. In 1864 the commissioners were directed to invest, in preference to all other loans and investments, the principals of the school, university, swamp. land, and drainage funds in the bonds of the state, paying seven per cent interest.[14] The Wisconsin State bonds purchased by the trust funds ranged in price from ninety-three

[13] *Governor's Message*, 1862, 6-8; ibid., 1863, 5.
[14] *General Laws of 1862*, ch. 89; ibid., 1864, ch. 217.

cents to par.[15] In speaking of the wisdom of the investment of the trust funds in the bonds issued by the State for war purposes, the Secretary of State in 1866 said, "The State by virtue of several laws very wisely provided for the investment of the trust funds in the bonds issued by the state for war purposes. This not only draws the bonds from the market, enhances the value of those still outstanding and relieves the people from the burden of taxation which would be felt were the principal to be paid at maturity, but it is the most safe and most economical method of providing for the safe-keeping of these sacred funds, and the prompt payment of the interest when required for distribution among the people in support of the common schools, normal schools and the State university. So long as the bonds of the State can be purchased with the surplus of these funds, it is to be hoped that no other source of investment will be sought. It is fortunate that the necessities of the state have forced the abandonment of the former pernicious system of numberless loans in small amounts, and on most uncertain security."[16]

In the above is the rather absurd suggestion that a state debt is desirable provided that it is a debt to the trust funds. Governor Fairchild, taking up this suggestion, recommended that the state debt to these funds be made perpetual.[17] The Governor argued that the tax for interest payments would be merely a tax for education, but why have such a tax unless it is necessary, unless the people of Wisconsin cannot afford to pay off their war debt?

As many individuals indebted to the trust funds were unable to pay, Governor Fairchild recommended that adjustments be made with these people, who had forfeited property mortgaged to the funds and were seeking relief from payment of the balances due.[18] Acting upon this recommendation, the legislature

[15] *Secretary of State's Report*, 1866, 4.

In 1867 it was provided that a part of the university and agricultural college funds might be invested in the Dane County bonds issued to aid the university enlargement. *Laws of 1867*, ch. 46.

[16] *Secretary of State's Report*, 1866, 4.

[17] *Governor's Message*, 1866, 16.

[18] *Governor's Message*, 1866, 19.

enacted a law which provided that the land commissioners might in conjunction with the governor and the superintendent of public instruction, if they thought that such action would conduce to the best interests of the state, compromise with such persons. Another law of the same year authorized the commissioners to sue for the amount due in any case in which there appeared to be any prospect of collecting on a judgment.[19]

As the time was drawing near when the bonds of the state would be all bought up by the trust funds, the Secretary of State in 1868 was of the opinion that it was necesary to find some new way of investing the annual additions to the funds. The statutes of 1849 provided for loans to individuals; a law of 1868 allowed the investment of the funds in the bonds of the United States, of the New England States, of New York, and of Ohio.[20] Experience, dearly bought, had condemned the system of loans to individuals as wasteful and as "an instrument of political persuasion if not of political corruption." The bonds of states other than Wisconsin paid not more than six per cent interest, and it was thought that soon, through refunding, the interest on United States bonds would be reduced to four or four and one-half per cent; while money was in demand in Wisconsin at from seven per cent to ten per cent. It was argued by Secretary of State Allen that the people of Wisconsin had no money to loan to the citizens of other states, that all the capital arising from the sale of state lands could find ample use at home. Accordingly, he advocated that the state borrow the income of the trust funds; and as the constitution forbade a state debt in excess of $100,000, he proposed that it be so amended as to permit the carrying out of his plan, by which, through reduced taxation, the trust funds would be loaned to the people of the state. It was urged that this plan would secure to the funds a safe and permanent investment, a high rate of interest, seven per cent, and economy of management. It would keep the capital of Wisconsin at home, and relieve the people of taxation. A similar plan had been in practice in

[19] *Laws of 1866*, ch. 23, Sec. 1; ch. 109.
[20] Ibid., 1868, ch. 111.

Ohio for some time.[21] Nothing came of this proposal. It occurs to the writer that perhaps the carrying out of this plan would have resulted in an extravagant state administration.

In passing, it should be noted that in 1862 the regents of the University were authorized to apply a sufficient part of the university fund to the extinguishment of building debts. The debt of the University to the fund for money loaned for the erection of the main building was canceled and the regents were excused from maintaining a sinking fund for the payment of legal indebtedness for the erection of University buildings.[22] There is no little question as to the validity of this law, as the university land grant was for the *support* of a university.*

In 1869, the legislature inaugurated the system of authorizing specific loans to specific towns and school districts. In that year a loan of $15,000 was authorized to school district number three in the town of Lancaster, Grant county. The rate of interest was to be agreed upon between the school district and the land commissioners, but was not to exceed ten per cent. The debt was to run for fifteen years and an annual tax for the payment of interest and to provide a sinking fund was to be levied. In 1871 the first loan of this kind at seven per cent was authorized, to the town of Onalaska, in La Crosse County.[23]

Governor Fairchild in 1870 spoke very highly of this system and recommended its extension. He pointed out that the bonds of the states were being redeemed constantly and consequently did not always constitute a stable investment. The granting of loans to towns and cities, under special acts, for the erection of school buildings had brought no losses to the fund, and could not, so long as the state reserved the right to levy a tax each year for the payment of the interest. Under such a system of loaning the funds, the people could enjoy the advantages of

[21] *Secretary of State's Report*, 1868, 26-31.

[22] *Laws of 1862*, ch. 268.

* In 1872 Governor Washburn attacked as unconstitutional the use of the university fund for buildings, and maintained that the most valuable lands had been sold at a very low price in order that means for the erection of buildings might be obtained. He estimated that if the lands in question had been held until 1872 they would have brought ten-fold the amounts for which they were sold.—*Governor's Message*, 1872, 17-18.

[23] *Private and Local Laws*, 1869, ch. 143.

using them for educational purposes, and the funds were not exposed to the losses incident to the system of loans to individuals.[24] In 1871 the legislature enacted the general law recommended by the governor. By this law the commissioners were authorized to make loans to school districts for the erection of school buildings, in sums not exceeding $10,000. The time of such loans was to be ten years and the rate of interest seven per cent. The money loaned together with all the other indebtedness of the district was not to exceed five per cent of the assessed value of the real property in the district. The loans were to be repayable in equal semi-annual installments with interest in advance. The commissioners were to make no such loan unless the application for it had been authorized by a majority vote of the district, and not until the district had voted a tax for the erection of the building equal to at least half of the amount of the loan asked for. An amendment of 1889 abolished this tax requirement. It was unlawful to rescind, modify or in any way interfere with the assessment and collection of this tax. It was provided that the district should levy annually a tax sufficient to pay the interest and amount of principal falling due each year. All taxable property within the district stood charged with the loan, and changes of boundaries were not allowable until the loan had been repaid in full. In 1877 it was provided that boundaries might be changed with the consent of the commissioners, but not in such a way as to release any security for the loan. In case any officer neglected or refused to do his duty in relation to the tax for the payment of the loan, it become the duty of the Attorney-General to bring mandamus proceedings in the Supreme Court to compel him to do his duty. Thus were the education funds very carefully protected.[25] Various changes have been made in this law. In 1899 the time limit was extended to fifteen years, and loans were authorized for the refunding of indebtedness as well as for the erection of school buildings, and the interest rate was lowered tc three and one-half per cent. The interest rate had been made six per cent in 1887. It was provided also that payments should

[24] *Governor's Message*, 1870, 6.
[25] *Laws of 1871*, ch. 42; *Laws of 1889*, ch. 393.

be made in annual installments beginning at a time to be fixed by the commissioners. In 1898 it was provided that loans might be made to the school directors of towns in which the township system of government obtained. In 1901 the limit of loans was raised to $25,000.[26]

The latitude allowed the commissioners in the matter of the investment of the funds was extended in 1883 when it was provided that investments might be made in the bonds of Michigan, Illinois, Iowa, and also the bonds of cities, towns and counties issued since the adoption of the amendment of Section 3, Article II of the constitution providing that the aggregate indebtedness of a city, town, or county shall not be in excess of five per cent of the taxable value of the property therein. The revised statutes of 1898 added the bonds of villages.[27]

Numerous special laws providing for specific loans were enacted. In 1874 a loan of not to exceed $200,000 to Iowa county was authorized. The interest rate was seven per cent, and at least one-tenth of the principal was to be paid each year. Annually in apportioning the state tax among the counties, the Secretary of State was to add to the Iowa county tax a sum equal to the interest at seven per cent and one-tenth of the principal. While under debt to the state, the county was prohibited from becoming indebted to an amount greater than five per cent of the average taxable value of the property in the county as shown by the last two assessment rolls. In 1875 a similar loan under similar conditions was made to the city and town of Mineral Point.[28] In 1876 there was a loan of $20,000 to the county of Racine. One-half of the principal was to become due in two years; the other half in three years. The same year there was authorized a loan of $100,000 to Wood county on the same terms as to Iowa county, except that the first payment on the principal might be made in two years. Still other loans were authorized.[29] In 1878 the legislature authorized a loan of not to exceed $20,000 to the City of Burnett, for the

[26] *Laws of 1887*, ch. 541; *Laws of 1899*, ch. 129; *Laws of 1901*, ch. 123; *Revised Statutes*, 1898, Sec. 258, Subd. 2.

[27] *Laws of 1883*, ch. 83; *Revised Statutes*, 1898, Sec. 258, Subd. 4.

[28] *Laws of 1874*, ch. 186; *Laws of 1875*, ch. 128.

[29] *Laws of 1876*, chs. 144, 107, 197; *Laws of 1877*, ch. 37; *Laws of 1880*, ch. 4.

purpose of constructing a narrow gauge railway. Before the loan was made, the route was to be surveyed, located, and established, and a majority of the legal voters were to declare in favor of the loan and to determine the amount thereof.[30] In the case of all these loans certificates of indebtedness made payable to the commissioners were to be deposited with the state. In many cases the annual payments of the principal were not to begin until after two, three, five, or six years.

In several instances, towns were allowed to convert bonds issued in aid of railway companies into certificates of indebtedness to the trust funds. For example, in 1879 the town of Little Wolf in Waupaca county was authorized to become indebted to the trust funds to an extent not exceeding $5,000. The ten $500 certificates of indebtedness made payable to the commissioners of public lands were to have no force or effect until the latter had retired, at fifty per cent of their face value, the bonds issued by the town to aid the Green Bay and Pepin Railroad Company. A like arrangement with the town of Waupaca provided for the retirement of its railroad bonds at seventy-five per cent of their face value. In the same year the town of St. Lawrence in Waupaca county was authorized to transfer its bonded indebtedness into certificates payable to the trust funds. The commissioners of public lands were directed to purchase the outstanding bonds of the town at the lowest price at which they might be purchased. The whole amount paid for them was not, however, to be in excess of the constitutional debt limitation of five per cent. The certificates of indebtedness in this case were to bear interest at seven per cent and the payment of the principal was to be made in ten equal annual installments. The same arrangement was entered into with the town of Plover in Portage county. In 1880, a loan of $30,000 for eighteen years to the town of Arcadia was authorized. This loan also was for the retiring of bonds. The price paid for the bonds was to be agreed upon between the owners of them and the town supervisors. Other loans were $100,000 to the county of Portage and $55,000 to Lincoln

[30] *Laws of 1878*, ch. 155.

county. The Lincoln bonds, issued in aid of the Wisconsin Valley Railroad Company were to be redeemed at par. There was also a loan of $50,000 to Brown county.[31]

In some cases of loans from the trust funds, the law required the vote of the electors of the administrative unit asking for the loan; in others the commissioners were allowed to exercise their discretion in this regard; in some cases the law allowed the county board of supervisors or the common council of a city or village to borrow.

The law authorizing loans to individuals continued to occupy a place in the statutes, but in 1878 it was altered as follows. Loans to individuals were to be in sums of not less than $500 nor more than $2,000. It was provided that property mortgaged to secure such a loan should be worth at least three times the amount of the loan, and this value was to be exclusive of buildings and all perishable improvements. As in the statute of 1849, the maximum period of such loans was five years, but extensions might be granted by the commissioners.[32] The statutes of 1878 provide also that if any part of the Agricultural College Fund is lost in any way, the Secretary of State shall add to the next tax to be levied thereafter a sum sufficient to make good such loss.[33]

In 1880 it was complained that the uninvested parts of the trust funds were unnecessarily large. On September thirtieth of that year there was on hand in the various funds $104,609.93. Governor Smith in defense of the commissioners said that they were obliged in handling the funds to comply not only with the written law but also with a predominating public sentiment, which, given expression in many acts of successive legislatures, undoubtedly favored the policy of loaning the funds to school districts, towns, villages, cities, and counties, but such a policy, except in the case of school districts, required for its carrying out the enactment of special laws. The Governor very wisely recommended the passage of a general act authorizing such a policy, which act, he said would effect four good ends; the time

[31] *Laws of 1879*, chs. 34, 198, 185, 161; *Laws of 1880*, chs. 34, 85, 136.
[32] *Revised Statutes*, 1878, ch. 17, Sec. 265.
[33] Ibid., ch. 17, Sec. 249.

of the legislature would not be taken up with the enacting of innumerable special laws authorizing loans, much needed uniformity in the manner of making loans and collecting payments of principal and interest would be secured, the loans could be made when needed, and the necessity of retaining large balances in the treasury would disappear.[34] In the opinion of the writer the last was by no means an assured result, nor is he certain that the Governor exonerated from all blame the commissioners for having had uninvested over $100,000 of the trust funds.

The law asked for by the Governor was enacted. It provided that upon certain conditions, the commissioners of public lands might make loans from the funds to towns, villages, cities, and counties in the state. In no case was a loan to run for longer than twenty years. The loan might be made in installments such that together with the other indebtedness of the town, city, or village it would not amount to more than five per cent of the average assessed value of the property in such town, city, or village for the three years next preceding the application for the loan. In 1891 it was provided that the loan might be used to pay off existing indebtedness and might be paid over to the town or city in installments as fast as the old indebtedness was cancelled.[35] The interest rate on such loans was to be the minimum legal rate obtaining at the time when the loan was made. In 1889 it was provided that the rate should not be less than five per cent; in 1891, not less than four per cent; in 1893 a uniform rate of four per cent for loans to school districts was established; in 1899 it was provided that the rate on loans should not be less than three and one-half per cent.[36] No loan can be made to a town unless the application for it has been authorized by the town supervisors, nor to any village unless authorized by a vote of not less than three-fourths of the trustees, nor to any county unless authorized by two-thirds of all the members of its board of supervisors. Certificates of indebtedness are to

[34] *Governor's Message*, 1881, 6.

[35] *Laws of 1891*, ch. 143.

[36] *Laws of 1889*, ch. 279; *Laws of 1891*, ch. 143; *Laws of 1893*, ch. 187; *Laws of 1899*, ch. 130.

be delivered to the Secretary of State. The taxable property of a public corporation securing a loan stands charged with the amount thereof and pending the payment of the debt no alterations in boundary are allowable such as would cut off from the town or other political unit any land. A tax is to be levied sufficient to pay the annual interest and installment of the principal, and the same are to be paid to the state out of the first moneys received for taxes. The use of a loan for any other purpose than that for which it was negotiated is forbidden, and any officer who becomes a party to a misapplication of a loan is liable to imprisonment for not more than five years, with hard labor, or to a fine not exceeding $1,000, or both. The commissioners may extend the time of loans, but in no case beyond twenty years nor in any case in which the payments of interest have not been kept up. In cases in which the county board of supervisors, common council, or board of trustees is not specially authorized by law to secure loans and make appropriations for the purpose for which the loan is wanted, the application for a loan from the trust funds must be authorized by a majority of the electors. The law of 1881 repealed all laws authorizing loans to individuals.[37]

Loans authorized by special legislative acts continued to be made. It will suffice to notice only one or two of these. In 1885 the commissioners were authorized to make a loan of $30,000 for thirty years at four per cent to the Light Horse Squadron of Milwaukee to enable that organization to erect an armory. The interest on the loan was to be paid annually, and after five years from the time of making the loan the principal was to be paid in annual installments of not less than $1,000. The bonds issued for the loan were secured by a mortgage on the real estate of the squadron. Until the loan should be repaid in full the state was to have free use of the armory for purposes of military defense in case of war, insurrection, rebellion, riot or invasion, or of resistance to the execution of the laws of the state or of the United States, and also for the storage of arms and ammunition. Other similar loans have been made.

[37] *Laws of 1881*, ch. 167.

On the loan to the Eau Claire Light Guard Army Corps in 1893 money was lost, and on this account in 1903 the Normal School Fund was reinbursed from the general fund to the extent of $1,000.[38]

The commissioners continued to have difficulty in investing all of the funds. In 1889 nearly $400,000 remained uninvested.[39] In his message in 1891, Governor Peck dwelt upon the matter of the investment of the funds. At that time the funds were loanable in State of Wisconsin bonds of which there were none, in the bonds of the United States and of certain specified states, of which bonds few were available, in certificates of indebtedness of school districts or municipalities in the state, which local bodies did not want as much as the commissioners had to lend. The Governor made no recommendations, but expressed the opinion that there might be securities other than those in which at that time the funds could be invested, other securities that would absorb all of the funds and also yield a higher rate of interest than the funds were then receiving.[40] The act of 1893 followed authorizing the investment of the funds in the bonds of boards of education, duly incorporated as such, of cities and counties. Another Act, of 1899, authorized investment in the interest bearing securities of towns, villages, cities or counties in the state. However, a price above what will net three and one-half per cent is not to be paid for such securities.[41] In 1903, the Governor declared that the trust funds were fully and profitably invested and that in 1901 and 1902 no transfer had been made from these funds to the general fund.[42]

The following figures show the condition of the funds at the end of the fiscal year, also the receipts of the School Fund in

[38] *Laws of 1885*, ch. 210; *Laws of 1893*, ch. 177; *Laws of 1893*, ch. 89.
Other special laws authorizing loans are:
Laws of 1883, chs. 77, 143, 153; *Laws of 1887*, ch. 410; *Laws of 1889*, chs. 169, 314; *Laws of 1891*, chs. 113, 231, 381; *Laws of 1893*, ch. 222; *Laws of 1897*, chs. 10, 21; *Laws of 1899*, chs. 241; *Laws of 1901*, ch. 45.
In 1899 a loan of not to exceed $75,000 from the Agricultural College Fund to the Regents of the State University was authorized; also a loan of not to exceed $60,000 to the Regents of the Normal Schools.—*Laws of 1899*, ch. 170.

[39] *Governor's Message*, 1889, 4.

[40] Ibid., 1891, 11.

[41] *Laws of 1893*, ch. 176; *Laws of 1899*, ch. 130, Sec. 2.

[42] *Governor's Message*, 1903, 1.

that year, which receipts are given in order to show the large proportion from taxation.

THE SCHOOL FUND INCOME.

Receipts, 1904.

From interest on certificates of indebtedness	$ 109,454 00
From interest on loans and deposits	70,428 33
From taxes	1,229,332 50
The School Fund, 1904.	
School lands remaining unsold (acres)	25,148.27
Productive Fund:	
In loans to the state	$1,563,700 00
In loans to towns, villages, cities and counties in the state	2,029,178 01
Balance on hand	16,334 95
Total	$3,609,212 96
The University Fund, 1904:	
Lands unsold (acres)	334 98
Balances due on land sold	$2,057 00
Productive Fund:*	
In loans to the state	$111,000 00
In loans to individuals	350 00
In loans to towns, cities and villages	106,270 00
Total	$219,620 00
The Agricultural College Fund, 1904:	
Lands unsold (acres)	120.00
Productive Fund:	
In loans to the state	$80,600 00
In loans to counties, etc., and in balances	232,707 00
Total	$293,307 00
The Normal School Fund, 1904.	
Lands unsold (acres)	1,376.53
Productive Fund:	
In loans to the state	$ 515,700 00
In loans to individuals	1,650 00
In loans to towns, etc.	1,424,288 86
Total	$1,941,638 86[46]

Sufficient has been said of the losses to the funds through their faulty and dishonest administration. An interesting commentary on the losses through this source is the law of 1905 can-

* The original endowment for the University was munificent and sufficient for the proper support of the institution. Its property has, however, been lavishly and imprudently disposed of and its revenues depleted. Such was the opinion voiced by Governor Taylor in 1875.—*Governor's Message*, 1875.

[46] *Secretary of State's Report*, 1903-04.

1906—Principal of school fund	$6,723,955 12
University fund	238,581 50
Agricultural fund	308,399 61
Normal school fund	1,955,008 86

celing mortgages on real estate executed to the state or territory of Wisconsin, upon which the records of the state treasurer and secretary of state show no payments since January 1, 1865.[44] Other losses arose through the sale of lands at prices that were too low, and through the failure of county treasurers to pay into the school fund all penal fines. This failure has obtained since the beginning of the Government. In 1882, the Governor observed that for twenty years back the treasurers of many of the larger and more populous counties had failed to pay penal fines into the school fund. In 1881 the Attorney-General brought suit in the Supreme Court of the state to compel treasurers to comply with the law in this regard. The court in a unanimous decision sustained the law. This decision effected the payment of most of the fines collected in 1880. The amount paid in that year was $11,583, being more than had been paid in the ten years preceding. It was estimated that there was due from the counties $100,000.[45] The amounts paid in by some of the counties are ridiculously low. For example in 1903, Dane county, having a population of 70,000, paid in $1,383, while Milwaukee county, having a population of 350,000, paid in $9.80. In 1904, Dane county paid in $2,431; Milwaukee county, only $35.77.[46] Mention has been made of the sale of land at prices below its value. Lands worth $15 and $25 have been sold for $1.25 or $2.00. A comparison of what Cornell University received for its Wisconsin lands with what the state of Wisconsin received for its lands is instructive. Cornell had 960,000 acres in northern Wisconsin, a large part of which was sold at sixty cents before the trustees of the university came to a realization of the value of the land. For the remainder of the tract, however, Cornell received more than $8,000,000. The land grants for public schools alone to the state of Wisconsin aggregated nearly 1,500,000 acres.[47] In 1905 all but 25,000

[44] *Laws of 1905*, ch. 331.
[45] *Governor's Message*, 1882, 13.
[46] Ibid, 1905, 85.
[47] *Governor's Message*, 1905, 84.
The United States Land Office gives the number of acres as 958,649; *State Grants of Public Lands-Tables; General Land Office, March 12, 1896.* (a pamphlet).

acres had been sold, but the total in the school fund from all sources was only $3,600,000. Governor LaFollette declared that not more than $2,000,000 had come from the sale of public lands, but that is certainly too low an estimate. The history of the sale and management of the state lands is taken up in the next chapter.

CHAPTER V

THE SALE AND MANAGEMENT OF THE STATE LANDS

By an Act approved September 4, 1841, entitled "An Act to appropriate the proceeds of sales of public lands and to grant preemption rights," Congress gave to certain states then in the Union and agreed to give to states thereafter coming into the Union each 500,000 acres of public land, the proceeds from which were to be used for internal improvements.[1] Wisconsin with the consent of Congress decided to devote its 500,000 to public schools. The Wisconsin Enabling Act, approved August 6, 1846 granted to the new state of Wisconsin for the support of schools the sixteenth section in every township, also ten sections of land for the purpose of completing or erecting state buildings, and all salt springs within the state not exceeding twelve in number along with six sections of land contiguous. In 1852 instead of the salt springs seventy-two sections of land were granted by Congress.* By an act approved July 2, 1862, Wisconsin was granted 240,000 acres for an agricultural college. The Wisconsin Enabling Act granted and conveyed to the future state to be appropriated solely to the use and support of a university the seventy-two sections of land set apart and re-

[1] *Land Laws of United States*, 1882, 260-261.

* *Secretary of State's Report*, 1877, 55.

Wisconsin has been granted the following number of acres for each of the following purposes:

For schools	958,649 acres
For a university	92,160 acres
For an agricultural school	240,000 acres
For public buildings	6,400 acres
Total	1,297,209 acres

State Grants of Public Lands-Tables; General Land Office. (United States) March 12, 1896, (a pamphlet).

served for the use and support of a university by an Act of Congress approved June 12, 1838, entitled "An Act concerning a seminary of learning in the Territory of Wisconsin." By an Act of Congress approved September 28, 1850 entitled, "An Act to enable the state of Arkansas and other states to reclaim swamp lands within their limits," Wisconsin came into possession of all the swamp lands within its borders. The proceeds of the sale of such lands Congress stipulated should be used in reclaiming the same. There have been numerous grants for specific works of improvement, such as canals and railroads.

The constitution of the state provides that the Secretary of State, the Treasurer, and the Attorney-General shall constitute a board of commissioners for the sale of school and university lands and for the investment of the funds arising therefrom. Further general provision is made for the sale of the lands in the following sections. "Provision shall be made by law for the sale of all school and university lands, after they have been appraised; and when any portion of such lands shall be sold and the purchase money shall not be paid at the time of sale, the commissioners shall take security by mortgage upon the land sold for the sum remaining unpaid, with interest at seven per cent thereon, payable annually at the office of the Treasurer... The commissioners shall have power to withhold from sale any portion of such lands, when they shall deem it expedient."[2] The significant provisions of these sections are first, some payment down shall be required of purchasers of the state lands, second, the commissioners may withhold land from sale. Unfortunately, these provisions have not always been heeded. There is much significance in the observation of the historian of land grants for education in the Old Northwest, "The whole history of Wisconsin discloses a solicitude on the part of the state to attract immigrants."[3]

The management of Wisconsin's public domain has been marked by inefficiency, carelessness, and fraud. The state has sustained great losses through the premature bringing of land

[2] *Constitution of the State of Wisconsin*, Art. X. Secs. 7, 8.

[3] Knight, G. W. *Land Grants for Education in Northwest Territory*, in *American Historical Association Papers*, I. 106.

into market, through trespassing, through under-appraisement, and through the sale on credit of timber lands which were forfeited to the state after they had been stripped of their wealth; the state, the people of the state, and prospective settlers have suffered great loss and great injustice because of the sale of immense tracts to speculators.

Because of the mass of details connected with the history of the public domain, it is advisable to treat the subject under different heads. The subject of trespassing will be taken up first. Trespassing is defined by the Wisconsin law as "digging or removing minerals, or cutting or removing or in any manner injuring lumber, timber, trees, wood or bark standing or growing." It will never be known how much the state of Wiconsin has lost because its lands were not protected from vandals. It seemed to be the favorite practice with the thieving lumber trespasser to purchase some timber land near a fine tract of timber owned by the state and then to wander from his land over onto the state's domain. No law providing penalties for trespassing was enacted until 1865, although such a law was greatly needed many years before. In 1858 the Governor called the attention of the legislature to the fact that trespassing was continual and that in consequence thereof some lands were losing their value.[4] A law of 1860 provided that trespassers might, if the land upon which they had trespassed was open to private sale, purchase such land by paying the appraised price and a penalty of twenty-five per cent. The penalty was made fifty per cent in 1864 and one hundred per cent in 1871.[5] If the trespasser held a certificate of sale for the land on which he had trespassed, he was to pay the balance due on the land and a penalty of twenty-five per cent of the purchase price; this penalty was

[4] *Governor's Message*, 1858, 27-28.

In 1856, by joint resolution of the legislature, William Crombie was appointed to secure and dispose of wood, timber, and lumber taken from State Lands. Crombie made a tour through the northwestern counties and undoubtedly saved to a considerable extent lands situated there from being stripped of their timber. He estimated the value of his work at $30,000. He gained for the State a small sum by the sale of timber stolen from public lands, and began suits against many persons guilty of trespassing.—*Secretary of State's Report*, 1856, 101.

[5] *Laws of 1864*, ch. 233; *Laws of 1871*, ch. 21, Sec. 5.

made one hundred per cent in 1876.[6] In cases of purchase the commissioners were to deliver up to the trespasser whatever lumber, timber, logs, shingles, or shingle bolts cut from the land had been seized by the clerks of the commissioners. In case the certificate holder was not the trespasser, the latter might regain possession of the property seized by paying the amount due on the land and the expenses of seizure and sale.[7] A law of 1871 provided that if the land trespassed upon had been sold previously it was to be sold only to the certificate holder. The law of 1865 already referred to made it a misdemeanor to injure in any way lands in which the state had an interest, including lands sold by the state on credit and lands mortgaged to the state. Any person who dug any mineral on or removed any mineral from such lands, or cut timber, lumber, trees, wood or bark upon any such lands, or removed any such timber or other material or any buildings, fences, fixtures or other property standing upon or belonging to such land or destroyed or injured the same, except when authorized by law was liable to imprisonment in the county jail for not more than six months and to a fine of not exceeding $1,000. In 1891 $100 was substituted for $1,000.[8] A fee of not exceeding ten per cent of the fines collected was offered as an inducement to county prosecutors to proceed against trespassers. Witnesses and others furnishing information are allowed not to exceed twenty-five per cent of fines. If the property in question does not exceed $100 in value, punishment is by fine of $10 to $100. Persons interfering with clerks appointed to protect the lands and to seize lumber, etc., unlawfully taken were made punishable by not more than one year's imprisonment and a fine of not more than $1,000.[9]

The law provides that when lands are sold on credit a certificate of sale shall be issued to the purchaser, but the title is to remain in the state until the full purchase price and interest have been paid. In 1849 it was provided that no certificate of sale shall confer upon the purchaser the right to cut down, destroy, or carry off the land purchased, any wood or timber thereon

[6] *Laws of 1876*, ch. 314, Sec. 5.
[7] *Laws of 1860*, ch. 233.
[8] *Laws of 1891*, ch. 64.
[9] *Laws of 1865*, ch. 377, Secs. 1, 3, 4, 6.

or any mineral therefrom, without the written consent of the commissioners; furthermore, in case of forfeiture the purchaser was made liable to suit for the amount of waste or injury that he had done to the land forfeited.[10] These provisions and penalties did not, however, protect the state against loss. A select committee of the legislature in 1854 discovered that 10,000 acres of pine lands valuable only for their timber were sold in 1853 on thirty years credit and with no payment down. It was customary to cut the timber from such lands and then forfeit them to the state. The committee very properly censured the land commissioners and declared such infamous transactions dangerous to the interests of the state.[11]

Notwithstanding the penal law of 1865, in 1866 the Governor complained that in spite of efforts to prevent it the stealing of lumber from state lands continued to be a great evil.[12] In 1876 Governor Ludington declared that a system obtained by which great depredations were committed on state lands and that the state secured but scant redress by the collection of "stumpage" from the trespassers. The sums collected were much less than the value of the timber taken. It was said to be a profitable business to strip public lands of their timber and then effect a settlement with the state.[13]

The first Governor of the State, Nelson Dewey, in his first message, recommended the sale of the school and university lands as soon as they could be appraised. He believed that the interest on the money received would exceed the rise in the value of the lands that would accrue to the state if sale should be postponed. Besides, if the lands were sold a large quantity would pass into the hands of industrious settlers and hence the productive resources of the state would be increased greatly, the amount of taxable property would be increased, and the revenues of the state would grow. Such reasoning with respect to the settler seems sound, but it left out of account the speculator and a board of land commissioners too often ready and

[10] *Revised Statutes 1849*, ch. 24, Sec. 17, 18, 21.

[11] *Report of Select Committee to Investigate the Land Office*, Appendix to *Senate Journal*, 1855.

[12] *Governor's Message*, 1866, 19.

[13] Ibid. 1876, 13.

willing to help him put the public lands out of the easy reach of the industrious settler. In fact, in this same message of 1849, Governor Dewey complained that the practice of disposing of the public domain in unlimited quantities was becoming a crying evil. In many parts of the state, settlement was being greatly retarded because immense tracts of the best lands were being held by speculators. Settlers were obliged to pay advanced prices for their homes, and then by their labor they enhanced the value of neighboring land held by non-residents. In one county a single individual, who was not even a resident of the United States, held upwards of 20,000 acres.[14] It was reported in 1854 that in the northern counties most of the school lands were entered by persons in the East and in many cases in 30,000 and 40,000 acre tracts.[15] Advertisements of large tracts of school lands were common. In 1858 James P. Falkner advertised for sale 50,000 acres of choice school lands in eastern and western parts of the state.[16] In 1855 Mann, Hammond and Company offered for sale over 100,000 acres of choice school lands in northern and northwestern counties.[17] Such advertisements show that a great deal of state land was bought for speculative purposes. The joint investigating committee of 1855 showed that in 1854 over 200,000 acres had been sold without any payment down and on thirty years credit. To nine persons were sold 129,520 acres. The smallest sale among these nine sales was one of 5,065 acres. There were among these nine sales one of 34,701 acres and one of 28,124 acres.[18]

In 1854 a bill restricting the sale of state lands to actual settlers and in limited quantities passed both Houses, but somewhere between the Senate Chamber and the Governor's office it mysteriously disappeared.[19] This disappearance is sufficient commentary upon the rapacity and unscrupulousness of the land speculators or their agents who hovered about the legisla-

[14] *Governor's Message*, 1849, 20, 21, 27.
[15] *Milwaukee Sentinel*, Feb. 22, 1854.
[16] *Daily Patriot*, Jan. 19, 1858.
[17] *Milwaukee Sentinel*, Mar. 29, 1855.
[18] *Report of Select Committee to Investigate the Land Office*, 5-6, in Appendix, *Senate Journal*, 1855.
[19] *Milwaukee Sentinel*, Mar. 1, 1855.

tive halls of the state. In 1865, a law against purchasing lands for speculative purposes was enacted. This law required that applicants for lands make affidavit personally or through an agent or attorney that they wanted the land applied for for their own use and for actual occupancy or cultivation, or for use in connection with an adjoining farm owned or occupied by the applicant, and further that the land applied for when added to the university or school land held by or being held for the applicant would not exceed 320 acres. In 1856 this law was extended to apply to swamp lands.[20] The attempt of the law of 1855 to prevent any more lands from falling into the hands of speculators and to afford settlers every opportunity to buy from the state was defeated in a large measure by large entries of lands while the bill was pending. Between the first and fifth of March large entries were made by clerks in the land office, in the name of Daniel Howell, who had no interest in the lands and whose name was used without his authorization. Others also made large entries. Even members of the legislature entered large tracts.[21] In this connection it should be explained that lands that had been once offered for sale at auction and forfeited lands that had been re-offered for sale were subject to private entry. The law of 1855 was no more effective than the earlier law of 1849 providing that at a public sale no one person was to be allowed to buy more than 160 acres. Notwithstanding the 320 acre limit, the commissioners continued to sell lands to speculators in tracts of 20,000, 40,000 and 60,000 acres. The fees illegally pocketed by the commissioners stimulated such sales, which increased the evil of land monopoly and injured the funds. The law provided that a fee of one dollar be paid for each tract purchased. The commissioners construed *a tract* as forty acres, so that the purchaser of 320 acres had to pay a fee of four dollars. It was the manifest purpose of the law providing for the fee to provide for the payment of appraising the lands and other costs connected with their sale and not to add to the private incomes of the commissioners.[22]

[20] *General Laws*, 1855, ch. 21; Ibid. 1856, ch. 125, Sec. 11.
[21] *Report of Select Committee*, 1856, 24.
[22] *Report of Legislative Investigating Committee*, 1858, in Appendix, *Senate*

In 1903 another anti-speculator act was passed. This law provides that whenever at a public sale of state lands, a person makes a bid and then refuses to pay the twenty per cent of the amount of his bid required by law, and to make affidavit that of the public lands sold since October 15, 1903, he owns no more than what with his present purchase amounts to no more than 160 acres, that he has no agreement or understanding and is under no contract, express or implied with any person, co-partnership or corporation for any sale, transfer, or conveyance of said lands, now or at any future time, bona-fide mortgages for raising some part of the purchase price excepted, and that he has not been engaged or instrumental, directly or indirectly, in inducing any person or persons to remain away from or refrain from bidding at the last public sale at which said lands have been or are being offered for sale, such person shall forfeit $25. This penalty is ridiculously low and the mortgage exemption leaves the way open for fraud. The same law of 1903 provides that no more state lands, except swamp lands, lands suitable for agriculture, wood lots convenient to farm homes and isolated tracts of not exceeding 80 acres each, shall be sold.* All public lands remaining unsold and all lands that the state may acquire are to constitute a State Forest Reserve.[23]

There can be no doubt that the state has lost a great deal through undue haste in selling its lands. If the sales had been for the most part to settlers the state might have gained more in the end then it lost through its haste in selling the lands, but, as has been shown, most of the sales were to speculators or to persons who despoiled the land and then forfeited it valueless to the state. There is some question too as to whether the state had a right to use its public lands for the purpose of drawing settlers, since the land grants were made for education and not for the purpose of attracting immigrants. Much of the University land was sold prematurely in order to secure funds for buildings, the erection of which out of the proceeds of the

Journal, 1858. The members of this Committee were M. M. Davis of the Senate, and B. L. Runals and E. Easton of the Assembly.

* Sales for cash only. *Laws of 1907*, ch. 193.

[23] *Laws of 1903*, ch. 450, Sec. 6, 7, 16, 17.

university land grant was of very questionable validity, as the land grant was for the *support* of a university. The Investigating Committee of 1856 pointed out in commenting upon the undue haste with which the lands were sold, that they were generally situated in new and uninhabited parts of the state and as they were surrounded by United States lands they were rarely appraised at more than $1.25 an acre, the federal price. The committee recommended a change of policy with respect to the sale of lands, pointing out that the educational interests of the state did not demand any material increase in the school fund at that time and also that the fund was then much larger in proportion to the number of children than it would be twenty years in the future, even under the most prudent management. It was recommended that the school and university lands remaining unsold be kept out of the market until other lands near them should have been sold or until further withholding of them would seriously obstruct the settlement of the country.[24] Such a policy would have brought more into the funds; it would have caused the lands to fall into the hands of actual settlers for the most part, instead of into the hands of speculators as did the policy then obtaining, but such a policy would have destroyed the splendid opportunity for graft that the lands afforded. Against the policy of withholding of the lands from sale it was argued that a retention of the lands would retard settlement. The policy employed, however, though intended from the point of view of the law to promote settlement, was under lax and dishonest administration of the law actually operating to retard settlement, by throwing the lands in quantities ranging from 5,000 to 75,000 acres into the hands of speculators.* The system of sale obtaining resulted also in great loss to the funds, since under it many lands were sold below their value. Except in the cases of a few tracts well known for their great comparative value, public sale brought little competitive bidding. Large tracts of land of the same general character as state lands and interspersed among them were sold to actual

[24] *Report of Select Committee*, 1856, 32.

*In 1853, a combination of persons bought 130,000 acres, and in 1854, a single individual bought 60,000 acres.—*Governor's Message*, 1855, 10.

settlers by railroads and other corporations at vastly superior prices. The advantage of the private corporations over the state in this regard was believed to lie in their practice of showing their lands and of selling to actual settlers, while the state sold for the most part to speculators. Of the approximately 250,000 acres sold by the state in 1882 only a very small proportion went to settlers.[25]

Another source of great loss was under-appraisment. It was rumored in 1849 that in some instances land worth $3.00 was assessed at ten cents an acre and was then preempted by the appraisers.[26] It is said that not a few of Wisconsin's millionaires derived their wealth from the purchase of valuable timber lands at ten and fifteen cents an acre. In 1852 it was reported to the Assembly that the 500,000 acre tract was appraised at from five to fifty cents an acre. Persons acquainted with some of the lands selected as a part of the tract pronounced them entirely worthless. It was said that the commissioner appointed to select the 500,000 acres selected from view a few choice pieces, which he himself preempted, and then selected the rest from the land office plats without seeing or examining the lands.[27] The findings of the Select Committee of 1856 corroborate for the most part these rumors and reports. Many appraisals were made contrary to law, which required that appraisers be sworn before entering on their duties and that their oath be annexed to the appraisal. Appraisers were supposed also to make a joint report to the secretary of state. The appraisal of much of the 500,000 acre tract, supposed to be choice and selected lands, was found to be at five, ten, fifteen, and twenty cents an acre. Clearly there had been gross dereliction of duty in either the selection or the appraisal of these lands. The average price realized up to that time from the 500,000 acre tract was $1.42 an acre; while the average price from the sale of the sixteenth sections, which were chance locations, was $2.74. Knight figured in 1885 that the school lands had yielded an average of $1.87.[28]

[25] *Governor's Message*, 1883, 28-29.
[26] *Madison Argus*, Feb. 6, 1849.
[27] Ibid. Feb. 4, 1852.
[28] Knight, supra, 111.

The conditions of sale and the prices of state lands will now be considered. The Revised Statutes of 1849 provided that the minimum price of every tract or lot of school and university lands should be the appraised value thereof, including the appraised value of improvements and also the expense of appraising and subdividing the lands and that no lands should be sold for less than their minimum price.[29] In 1850 the minimum price of university lands was placed at $10 an acre and the law declared that no further appraisement was necessary. The next year this minimum was reduced to $7, but it was expressly stipulated that no university land should be sold at less than its appraised value. In 1858 the minimum price was further reduced to $3.[30] In 1863 the commissioners of the school and university lands were directed to reduce the price on lands that had been sold, forfeited and resold to the state by deducting from the price theretofor set upon the lands by the law the amount of interest, penalties and advertising due the state in connection with such lands and also twenty per cent of the amount of the principal due the state at the time of forfeiture, but in no case was land to be sold for less than seventy-five cents an acre exclusive of taxes due and unpaid.* The price of all lands that had been offered for sale and remained unsold was reduced thirty-three and one-third per cent, but no such land was to be sold for less than seventy-five cents an acre. The next year, 1864, the price of all university lands that had not been appraised was fixed at $3 an acre.[31] A law of 1883 provided that all state lands that had not been offered for sale should be offered at the minimum price of $3 an acre and if not sold should be designated as unsold.[32] In 1852 the minimum price of lands in the 500,000 school tract was fixed at $1.25,[33] but in 1863, as

[29] *Revised Statutes*, 1849, ch. 24, Sec. 4.

[30] *General Laws* 1850, ch. 176; *Laws of 1851*, ch. 392; *Revised Statutes* 1858, ch. on Public Lands.

*Unpaid taxes with interest at twelve per cent became a charge on lands sold on credit. The same law covered the non-payment of such charge as covered the non-payment of principal or interest when due.—*General Laws* 1858, ch. 92.

A law of 1858 provided for a penalty of twenty-five per cent of the amount of taxes unpaid on lands sold on credit.—*General Laws* 1858, ch. 82.

[31] *General laws* 1863, ch. 287; Ibid. 1864, ch. 455.

[32] *Laws of 1883*, ch. 332, Sec. 1.

[33] *Laws of 1852*, ch. 9.

has been noted, the price of lands that had been offered for sale and remained unsold was reduced thirty-three and one-third per cent. In 1864 it was provided that all school lands that had never been appraised should be declared worth $1.25 an acre. If the lands had been disposed of to settlers there would have been great social utility in so low a price but for the most part sales were to land speculators, consequently a low price simply enabled that class to grow rich at the expense of the settler and of the state. Accordingly, there is complete justification for the contention of the Governor in 1883 that the fixed price of $1.25 an acre was unwise and that there was no reason why the trust funds of the state should not have reaped the benefits of the proximity of state lands to markets and railroads.[34] In 1866 the minimum price of the agricultural college lands was fixed at $1.25 an acre.[35] A law of 1855 granted preemption rights in swamp lands or overflowed lands to persons who before the day of sale of the land desired took up a residence thereon, cultivated the land and made improvements to the value of $10 per forty acres. Not more than 160 acres could be purchased by one person under this right. The price was fixed at $1.25 an acre. In 1856 a law was enacted declaring that after October 15 of that year there was to be no further preemption of swamp or overflowed lands and raising the price to $5 an acre.[36] This repealing law was enacted upon the recommendation of the Governor, who maintained that as much of the land in question was timber land and good for nothing but its timber, the preemption law was a license to commit waste at the expense of the state. The preemptor stripped the land of its timber and the state had no guarantee that anything would ever be paid. The state was under obligations to sell the land at $1.25 an acre, but the preemptor was under no compulsion to buy at all, while the law gave him license to commit upon the land whatever waste he pleased.[37] The commissioners of public lands maintained, however, that while the Act of April,

[34] *Governor's Message* 1883, 29.
[35] *Laws of 1866*, ch. 121.
[36] *Laws of 1855*, ch. 84, Sec. 10; *Laws of 1856*, ch. 125, Sec. 3.
[37] *Governor's Message* 1856, 14.

1855 invited a settlement of the swamp lands by the citizens of the state, the Act of October 1856 operated as a prohibition of such settlement, since it repealed the preemption law and raised the price to five dollars an acre, one half of which in the case of timber lands was to be paid in advance. The commissioners contended that since the settler acquired no future rights by his occupancy of the swamp lands and since the price of such lands exceeded greatly the price of school and university lands, the swamp lands would not be settled and consequently destruction and waste on such lands were bound to ensue. The commissioners recommended a reduced minimum price and expressed faith in public sale at Madison's insuring prices that would yield increased returns from the lands. As it could not be determined from the plats which were timbered and which were not timbered lands, they recommended that the distinction as to payment based upon whether lands were timbered or not be dropped.[38] It cannot be determined to what extent, if at all, the commissioners were prompted in their recommendations by the interests of land speculators, but it is a fact that the latter brought great pressure to bear on the legislature and in 1857 the law of 1855 was revived.[39] In 1865 it was enacted that sale of swamp lands and overflowed lands should be for cash only and that the minimum price should be seventy-five cents. Two years later it was provided that fifty cents might be charged in Wood and Juneau counties.[40] In subsequent years a uniform price of fifty cents was established in many counties. The Revised Statutes of 1878 fixed the following minimum prices for swamp and overflowed lands.

1. Lands offered at public sale prior to April 15, 1863 and remaining unsold, 75 cents.

2. Lands offered at public sale since April 15, 1863 and remaining unsold, $1.25.

3. Lands sold for $1.25 or more and forfeited to the state prior to April 19, 1867, $1.25 and all taxes remaining unpaid at the time of forfeiture.

[38] *Report of Commissioners of Public Lands*, 1856.
[39] *General Laws* 1857, ch. 57; *Milwaukee Sentinel*, Feb. 27, 1857.
[40] *Laws of 1865*, ch. 537, Secs. 7, 19; *Laws of 1867*, ch. 50.

4. Lands sold for less than $1.25 and forfeited and all lands forfeited since April 19, 1867, amount due at time of forfeiture for principal, interest, penalty, unpaid taxes, costs and charges.

5. Lands in certain counties and certain lands in certain other counties, 50 cents.[41]

The first law relating to the sale of the state lands provided that in the year 1850 the commissioners of school and university lands should sell at public auction all of the sixteenth section grant that had been duly appraised, except such lands as they with the approval of the Governor, should deem it wise to withhold from sale. After the year 1850 lands remaining unsold and having been duly appraised were to be sold from time to time at the discretion of the commissioners and the Governor. The constitution in providing for the sale of the lands does not direct that the Governor should have any connection with such sales and in fact he has not had. Whenever there is water power on lands it is optional with the commissioners whether all the tracts on which such power is found shall be sold separately or as a whole. No person is, however, allowed to buy more than 160 acres of such land. Lands that have once been offered at public sale and forfeited lands that have been re-offered at public sale are subject to private sale to the first person making application for them and complying with the terms of sale. The price of such lands is the amount of their last appraised value. If two or more apply for the same piece of land at the same time, sale is to be made to the highest bidder. The Statutes of 1849 provided that the commissioners should not demand at the time of sale of any land less than ten per cent nor more than seventy-five per cent of the purchase price; interest on the balance to the first of the following January was also to be demanded. In 1863 it was provided that at least twenty-five per cent of the purchase price should be paid at the time of the sale.[42] A law of 1855 provided that pine lands should be sold for cash only. This law was called forth by the practice so detrimental to the state of purchasing pine lands on credit, stripping them and then forfeiting them valueless. In 1878 it

[41] *Revised Statutes* 1878, ch. 15, Sec. 205.
[42] *Laws of 1863*, ch. 287.

was provided that all sales of swamp land in Marathon county should be for cash only.[43] A law of 1903 provided that twenty per cent of the sale price should be paid at the time of sale and the balance with interest at seven per cent within sixty days, which time the commissioners might extend to six months.[44] In 1862, as has already been noted, Governor Harvey declared that the practice of selling state lands on credit with a small cash payment had proved a cheat and a delusion. He recommended that the practice be discontinued, except perhaps in the sale of "actual farm lands in limited quantities and in good faith for immediate settlement and improvement."[45] In 1905 it was enacted that all sales of public lands should be for cash, to be paid at the time of sale.[46] In 1858 it had been provided that the full price of university lands should be paid at the time of sale, unless security against waste, loss through trespassing, etc., were given, in which case the commissioners were not obliged to require any cash payment.[47]

As provided by the Statutes of 1849, the balance of the principal was to be paid in one or two installments, at the option of the purchaser, at any time within ten years. The interest at seven per cent was payable in advance on the first of each January or within thirty days thereafter. In several years, owing to hard times, the time of payment was extended. In 1863 the times of payments on land sold before 1856 were extended ten years.[48] It was provided in 1849 that when the balance of his purchase money became due the purchaser might retain the balance from year to year as a loan, but the legislature reserved the right to change the law so as to require payment at any time after one year from the time when the original credit expired. In fixing the amount of purchase money to be paid at the time of sale, the commissioners were to be guided by the amount of permanent improvements on the land sold, not likely to be destroyed, the proportion of timber, mineral land or prairie

[43] *General Laws* 1855, ch. 21. *Revised Statutes* 1878, ch. 15, Sec. 209.
[44] *Laws of 1903*, ch. 450, Sec. 15.
[45] *Governor's Message* 1862, 6.
[46] *Laws of 1905*, ch. 184.
[47] *Revised Statutes* 1858, ch. 28, Secs. 28, 29.
[48] *Laws of 1863*, ch. 134.

and the general situation and character of the land with respect to its liability to be injured or of becoming less valuable because of trespass or waste of any kind. Whenever they deemed it advisable the commissioners were at liberty to require a bond and mortgage to secure the payment of the balance of the purchase price. Such mortgages were to be on unincumbered real estate double in value the amount of the purchase price remaining unpaid. All payments on account of school and university lands were to be in specie. A law of 1850 provided that, when in the opinion of the commissioners, school lands were an adequate security for their purchase price and would continue to be so, thirty years credit for the whole purchase price might be granted.[49] It has been noted how this privilege was abused and how consequently the school fund lost very heavily. Titles of school and university and other state lands also remain in the state until patents are issued, and patents are not issued until the purchase price and interest are paid in full. When land was purchased on credit the purchaser received a certificate of sale, which conferred no right to cut down, destroy or carry off the land any wood or timber or any mineral without the written consent of the commissioners and only to the extent of such consent, but the purchaser was allowed to use freely any wood or timber on the land for the erection of fences or buildings thereon. He might also take firewood for the use of his family and nothing in the clause prohibiting him from cutting timber was to be so construed as to deny him the right of "actually and fairly" improving his land for purposes of cultivation. Whenever any lot or parcel of land had improvements on it and the same had been appraised and returned by the appraisers, the purchaser of such land if he did not own the improvements was under obligation to compensate the person owning the same, which person might recover by suit the value of his improvements, and if the improvements were not paid for within two years from the time of sale the certificate of sale became void and the commissioners might resell the land.[50]

[49] *Laws of 1850*, ch. 236, Sec. 12.

[50] *Revised Statutes* 1849, ch. 24, Secs. 2, 3, 7, 8, 10, 11, 14, 17, 18, 21, 25,

The commissioners were prohibited from purchasing state lands either in their own name or that of any other person. In 1855 this prohibition was extended to clerks and other persons employed in the land office, and the Revised Statutes of 1878 provided that for every tract or parcel purchased in violation of these laws the offending party was to forfeit $250.[51] In 1866 all the laws governing the sale of school and university lands were extended to apply to the agricultural college lands.[52] The commissioners were permitted to lease from time to time for periods not exceeding one year and until they should be sold all education lands having improvements on them. Such leases were to contain "proper covenants" protecting the lands against trespassing and waste.[53] A law of 1869 empowered town boards of supervisors to lease swamp and overflowed lands for the cutting of grass and picking of cranberries. The rents went into the town drainage fund.[54]

Preemption rights, forfeiture and redemption of lands remain to be treated. At the beginning of the state's history it was enacted into law that all persons who were in 1849 and had been prior to August 12, 1848 occupying any school or university lands, and any person or persons who, at the time of appraisal, were in possession of any of the state lands either by lease or by express permission of the school commissioners of the town in which the lands were located, in cases in which the lands were situated in counties under the township system of government, or without such permission in the case of lands situated in counties under the county system, had preemption rights to the land that they occupied. No such right, however, extended to more than the least subdivision of the section as divided by the appraisers, and in no case was it to extend to more than forty acres. The price to be paid was the appraised value but in no case was it to be less then $1.25 an acre. Preemption rights were to be proved before the land commissioners

30, 31, 37. (The Revised Statutes of 1849 contain the first laws relating to the sale of State Lands.)

[51] *General Laws* 1855, ch. 82. *Revised Statutes* 1878, ch. 15, Sec. 188.

[52] *Laws of 1866*, ch. 121.

[53] *Revised Statutes* 1849, ch. 24, Sec. 51.

[54] *Laws of 1869*, ch. 151, Sec. 20.

by the affidavits of two or more disinterested persons, citizens of the state, and unless proved prior to the day set for the sale of the preempted lands, such rights were forfeited.[55] In 1850 it was enacted that any person who at the time of the location for school purposes of any tract in the 500,000 acre grant had made an actual settlement on the tract and had cultivated it had a preemption right to the same. This right extended to no more than 160 acres and the price to be paid was not to be less than $1.25 an acre. In 1858 this right was limited to 40 acres. A law of 1851 granted preemption rights in school lands to every person who at the time the law was passed had made either a settlement or improvements. Settlement but not improvements made subsequent to the enactment of this law established a preemption right. This law fixed no minimum price. Another law of the same year provided that preemption rights to school or university lands might be established at any time prior to the day when they were offered for sale.[56] A law of 1864 established preemption rights to swamp and overflowed lands. Any resident of Wisconsin who was or should be in actual occupancy for agricultural purposes of any swamp or overflowed lands belonging to the state that had never been offered for sale and who had or should have made improvements on the land to the extent of $10 for every forty acres prior to the first advertisement of such land for sale was declared to have the right when the land was offered for sale to purchase the same at $1.25 an acre, if he proved his right as provided for by law. This right of purchase was forfeited if payment was not made within ten days of the time prescribed by law for the sale of the lands. Persons filing preemption claims with the registers of deeds in their respective counties had a right to occupy the lands claimed, until they were sold, but they were prohibited from cutting more timber from the lands than was necessary to their use. Who, however, was to decide how much was necessary? This law undoubtedly made the way to waste more open, and is to be criticized further because

[55] *Revised Statutes* 1849, ch. 24, Sec. 59.

[56] *Laws of 1850*, ch. 236, Sec. 9; *Laws of 1851*, chs. 35, 200. *Revised Statutes* 1858, ch. 28, Sec. 17.

the ten day limit was too short.[57] A law of 1883 allowed actual settlers desiring state lands for agricultural purposes to enter at $1.25 an acre not to exceed five contiguous subdivisions and not exceeding 200 acres to one person. Two years later the preemption laws were repealed, but persons who had then acquired rights under them were not affected by the repeal.[58]

There remains to be noted the preemption law relating to railroad lands granted to the state. A law of 1869 provided that any male adult resident of Wisconsin who was a citizen of the United States or had declared his intention of becoming one might, under certain conditions, have a preemption right to odd-numbered sections of certain lands in Pierce, St. Croix, Burnett, Barron, Douglas, Ashland, and LaPointe counties, which sections had been granted to Wisconsin to aid in the construction of railways. This right was contingent upon residence on the land or the making of improvements worth $100 before March 1, 1869. No more than 160 acres could be purchased under this right and the minimum price was fixed at $2.50 an acre. A preemption right to such land was to be proved and the price paid within twenty days of the time when any railway had constructed twenty consecutive miles so as to include the land preempted.[59]

The forfeiture and redemption of lands will now be taken up. Non-payment of either principal or interest when due worked a forfeiture of all right and interest in the land purchased. If, however, at any time before the land was resold, payment was made of the amount due, with interest and the costs occasioned by the delay and also a penalty of five per cent of the whole sum owed, resale was prevented and the original contract revived. The penalty was reduced to three per cent in 1862.[60] By a law of 1853 the commissioners were obliged to advertise as open to sale to any one lands that had been forfeited for six months. The minimum price was to be the amount due plus the costs of sale.[61] The Governor maintained in 1855 that in

[57] *Laws of 1864*, ch. 156.
[58] *Laws of 1883*, ch. 332, Sec. 3; *Laws of 1885*, ch. 383.
[59] *Laws of 1869*, ch. 161.
[60] *Revised Statutes* 1849, ch. 24, Secs. 15, 16; *Laws of 1862*, ch. 269, Sec. 1.
[61] *General Laws* 1853, ch. 43.

many cases interest due to the trust funds was not paid when due, because of ignorance or accident, and he recommended therefore that purchasers of lands who failed to pay their interest when due be protected by the granting of a reasonable equity of redemption when such lands had been entered by other persons and that the time for redemption after the advertising of the lands for resale be extended.[62] The law enacted in this year provided that lands that had been forfeited for three months be advertised for sale, but that the sale should not take place less than three months nor more than six months after the advertisement appeared. This law was extended in 1862 to apply to swamp as well as to school and university lands.[63] A law of the same year, 1862, declared that no land mortgaged to the state by a union soldier or non-commissioned officer was to be sold prior to three months after his discharge. Any soldier or non-commissioned officer, his heirs, executors, administrators or assigns might within three months after his discharge or the close of the war redeemed land mortgaged to secure a loan from the state or any lands held on certificate and forfeited, by paying the interest due from January 1, 1861. This law applied only to volunteers; two years later it was extended to apply to drafted men also.[64] In 1872 it was enacted that lands held on certificates which lands had been sold because of non-payment of taxes or of interest might be redeemed at any time within ninety days of the date of sale, provided that the former owner could show that at the time of sale the land was under cultivation in whole or in part or adjoined and was being used in connection with other cultivated land owned by him. The redemptioner was obliged to pay to the state treasurer for the benefit of the purchaser the amount paid for the land at its resale, "with twenty-five per cent of the amount paid for taxes, interest, and costs." No patent to such lands was issuable until the ninety days had expired. Later the law was made less liberal toward the redemptioner. He might redeem his land at any time before its sale by paying the interest

[62] *Governor's Message* 1855, 9.
[63] *Laws of 1855*, ch. 22; *Laws of 1862*, ch. 129.
[64] *General Laws* 1862, ch. 131.

due, taxes unpaid, cost occasioned by his delay in paying and damages amounting to three per cent of the whole sum owed for the land. In 1889 it was provided that redemption might be made at any time within five days of the sale.[65]

The wasteful and often shamelessly corrupt management of Wisconsin's public lands illustrates two very important principles of public financial administration; first, it is folly to economize unduly in the management of great public interests, and second, laws will not execute themselves. The framers of the Wisconsin Constitution provided for a false economy in the management of the state lands when they placed the responsibility for that management in the hands of officers whose other duties took first place, instead of establishing or providing for the establishment of a well organized department for the management of that splendid source of wealth bestowed upon the state by the National Government. The legislature enacted many land laws that were excellent in themselves, but which failed to accomplish their ends or did so only in a minor degree, because good and efficient administrative machinery for their enforcement was lacking. The problem was by no means an easy one, but the way in which its public lands and its trust funds have been managed should be a source of regret and of shame to the great state of Wisconsin.

[65] *Laws of 1872*, ch. 133. *Revised Statutes* 1878, Sec. 225. *Laws of 1889*, ch. 483.

CHAPTER VI

FINANCIAL ADMINISTRATION

I. The Financial Administration of the State Departments

The first systematic and thorough investigation of the State Departments was made in 1856. In the chapter on the Administration of the Trust Funds are given the results of that investigation and of others in so far as they had to do with the school land office. In 1855 numerous persons complained that they could not get their claims against the state satisfied. When at the end of that year State Treasurer Janssen retired from office, it was rumored that he was short in his accounts, and such was indeed the case. Accordingly, an investigation of his office and of the other state offices was undertaken by a select joint committee of the legislature.

This committee found that the books in the office of the Treasurer and in the School Land Office had been kept in a loose and careless manner, in a way totally devoid of system. In the school land office the books were disfigured and defaced by erasures of names and figures and by the substitution of other names and figures with interpolations, remarks, and alterations, thus making it impossible to ascertain original entries, dates, or the amount of principal and interest originally paid. The entries in the treasurer's office presented no regular succession of dates; his vouchers were in a confused mass; many were missing; many offered no evidence of the payment of money to any one.[1] In several instances money had been drawn from the treasury without authority of law. State officers and

[1] *Report of Joint Select Committee* 1856, 4 in *Wisconsin Miscellaneous Pamphlets*, XXVIII.

clerks anticipated their salaries, leaving only a slip of paper marked "good for so many dollars." Sums were paid to persons who merely expected appropriations in their favor.[2] Beriah Brown was paid $3,000 before any appropriation to him had been made. In some cases there had been double payments.[3] Payments on the sales books of the land office to the amount of $5,900.61 did not appear on the Treasurer's books. Payments on land certificates that could not be found on the Treasurer's books amounted to $16,245.94. Payments on loans to the amount of $575 had not been entered in the books of the Treasurer.[4]

Testimony was given showing that while Treasurer Janssen was absent from Madison, Seaver, his deputy, was grossly inattentive to his duties. He was frequently found intoxicated in his office with the vaults open. Persons not connected with the office were sometimes with him. On two occasions he opened the vault at night. At another time he and another man both intoxicated were discovered in the vault looking at the money. Liquor was kept in the vault. One night, on which Seaver went into the vault, he lost several hundred dollars at a gaming table in Madison. All these things were well known about the capitol at the time.

There was manifested at the time considerable disposition to excuse Janssen, at least in part. The *Appleton Crescent* said, "No one who knows him regards him as a willful plunderer. He left his official matters—that sacred school fund—in the hands of harpies, political adventurers, mere speculators and spendthrifts. He must suffer the consequences of an overweaning confidence in the rotten-hearted men who were washed to the surface by the waves of ill-directed political sentiment."[5] In the legislature, Mr. Noggle declared that Janssen had been the victim and tool of the most infamous set of scoundrels that ever got into office.[6] There were some, however, who were dis-

[2] Ibid. 6, 7.
[3] Ibid. 41.
[4] Ibid. 99, 162.
[5] Quoted in the *Milwaukee Sentinel*, Feb. 19, 1856.
[6] *Milwaukee Sentinel*, Feb. 21, 1856.

inclined to believe that Janssen had been a mere tool. It was said that he had been nominated for the office of treasurer not because of any special fitness for the place, but merely in order to catch the German vote, without which "Sham Democracy" in Wisconsin was a mere ghost of a party.[7] In 1857 Janssen petitioned the legislature asking that his liabilities to the state be canceled. He affirmed that he had gone out of office no better off than when he entered office, that the deficit[8] in the treasury arose from carelessness in bookkeeping and the dishonesty of his assistants and others who had access to the vaults, that he was obliged to leave the business of his office to his assistants during a considerable time because of private misfortunes, the burning of his house and of one of his children, and the death in rapid succession from cholera of his brother, his father-in-law and three of his children, that under the circumstances he would have resigned his office if he had not thought that the Governor would have demanded from the Treasurer's office the quarterly reports required by law. He affirmed further that not a cent of the deficit had been appropriated to his own use or to the use of any other person through him and that he was not guilty of gambling or speculating. The *Milwaukee Sentinel* asked whether the interests of the public demanded that Janssen be made the victim of his political friends whom he had trusted and be stripped of his little property or whether the state should charge the deficit to profit and loss and thank Heaven that it had gotten rid of the "Forty Thieves" with no greater loss.[9] However, as is shown in the chapter on the Administration of the Trust Funds, the "Forty Thieves" cost the state much more than Janssen's deficit. After much debate and much amending and referring and re-referring to committees, the assembly by a vote of 46 to 41 passed a bill to discontinue temporarily the suit against Janssen and his sureties and directing the Governor to settle with the sureties if a settlement could be made on favorable terms. In the Senate after

[7] *Milwaukee Sentinel*, Feb. 20, 1857.

[8] The deficit was $34,973.95, *Milwaukee Sentinel*, Feb. 16, 1856; later it was reduced to $31,318.54, *Secretary of State's Report*, 1858, 132.

[9] *Milwaukee Sentinel*, Feb. 10, 1857.

a long discussion action in relation to the matter was postponed indefinitely by a vote of 13 to 8.[9] Janssen's deficit continued to be included among the resources of the state until 1860, when it was dropped, because there appeared to be little prospect that any of it would ever be recovered.

The committee of investigation, which was a standing committee for some time, in 1858 found the Treasurer's office in much better condition than in 1856. The books and papers were found to be "neatly, systematically and properly kept;" the business routine of the office was "correct and creditable." In the management and control of the funds, however, there appeared to have been a degree of laxity dangerous to the Treasury. The Treasurer, Samuel D. Hastings, testified that the principal part of the funds paid over to him by his predecessor was in paper and a considerable part in *wild cat* currency. Much of this currency bore evidence of having been brought direct from the Bank Comptroller's office to the treasury. The investigation revealed that there obtained an arrangement for reciprocal private accomodation and advantage between the State Treasurer, the Bank Comptroller, and the Dane County Bank and probably other banks also. The committee declared that the practice of receiving the paper of specie paying banks, which had a known "local habitation," in payment of state indebtedness might perhaps be permissible, but to allow the treasury to be used by bankers and the public funds to be exchanged for other and less convertible paper was reprehensible. Reprehensible was a mild term for such a practice, which was nothing short of grossly and flagrantly criminal. In fact it was not lawful to receive any kind of paper money for dues to the state.

In 1854 an attempt was made to make state bank notes receivable for taxes, but the bill failed to pass, in consequence of which there was much excited discussion and condemnation of the provision requiring the payment of taxes in specie only. Gold was then at a premium of one per cent; silver, at a premium of five per cent. The *Watertown Register* declared that

[9] *Milwaukee Sentinel*, Mar. 2, 1857.

if the state bank paper was not good enough for the state, it was not good enough for the people and in that case the banking law should be repealed. The phrase "Specie for the Government and rags for the people" was much used in the discussions.[10] In 1855 the State Treasurer had presumed to declare that the notes of banks were receivable.[11] Three years later a resolution was introduced in the legislature to instruct the treasurer to receive the notes of specie paying banks, but so great was the feeling against the *wild cats* that the resolution was voted down. It was declared that the treasury had become a rendevous for *wild cats,* which declaration was borne out by the investigation. There was considerable difference of opinion as to whether the Treasurer should be compelled to received notes. On the one hand it was said that money good enough for the people was good enough for the state; on the other, that paper money was so much debased by *wild cats* that it was not good enough for either people or state. The discount at that time on bank paper was four per cent. The Treasurer issued a specie circular declaring that only gold or silver would be received by the state.[12] However, corruption in the administration of the Treasurer's office continued. Specie was required in payment of public dues, but in many cases, if not in all, depreciated Wisconsin bank notes were paid out to the creditors of the state. In a letter to the *Wisconsin Patriot* a citizen asked what became of the gold paid into the treasury and of the eastern drafts, a considerable number of which were received from persons in the East who held Wisconsin land certificates. Both gold and eastern drafts were at a premium in Wisconsin currency, and it was intimated that the drafts were disposed of to Holton's Bank in Milwaukee. It was very reasonably demanded by this correspondent that if the state was to conduct a broker's shop, the profits therefrom should go to the state.[13] The agitation of the matter led to the introduction in the legislature of a bill to allow payments to the

[10] *Milwaukee Sentinel,* Feb. 9, 1854.
[11] Ibid. Jan. 22, 1855.
[12] *Democrat-Patriot,* Jan. 21, 1858.
[13] *Wisconsin Patriot,* Jan. 25, 1859.

state in currency. It was affirmed that it was not the purpose of the bill to countenance depreciated bank paper, but to break up an unfair system whereby the people were oppressed and a few favorites were benefited. The chief argument for the bill was that a currency used by the people and regarded as safe in their private business transactions was good enough for taxes. Money good enough for the people was good enough for the state. There was much vigorous protest against the coin clause in the tax laws, but on the other hand, the "Rag Bill" was attacked as being favorable to the banks and as an endorsement of *rags*.[14] Hard money philosophy and political and personal considerations killed the bill.

The Investigating Committee in 1860 reported that the business of the Treasurer's office was conducted in a most concise and business-like manner. The committee made no adverse observations in regard to the Treasurer's office, but it disclosed a scandalous condition respecting the public printing. In the period from February 25, 1859 to January 1, 1860 the public printer received from the state $38,176 for work the contract price of which was but $18,553. He was overpaid to the extent of $19,623.[15]

The writer will now revert to the investigation of 1858, which revealed a rather unsatisfactory condition of affairs in the Secretary of State's office. The records and papers were in good order and accurately kept. The system of auditing and of settling miscellaneous accounts, however, was condemned as faulty and as bringing a ⁻ ain upon the treasury. Some of these accounts or claims were adjusted through the legislature; some, through the Secretary of State. In the case of claims adjusted through the legislature, it was impossible to prevent designing persons from obtaining duplicate appropriations at two different sessions. One legislature would pass upon a claim and appropriate the amount found due; the next legislature would be presented with a claim for the balance with large ad-

[14] Ibid., Feb. 4, 1859.

[15] Appendix, *Senate Journal* 1860, Document A.

It should be noted that in 1894 the State secured judgments against former State Treasurers for $327,002.55, on account of misappropriations of interest on State funds. *Secretary of State's Report*, 1893-94, 29, 30.

ditions and would be besieged until the entire amount was paid. It was impossible under this system to prevent the payment by a subsequent legislature of the balance rejected by a preceding legislature. Likewise, if the duty of adjustment fell to the Secretary of State, with no more specific and guarded provisions of the law than then obtained and no more rigid accountability was required of the claimant or of the officer, the state was bound to suffer loss.

Great irregularity was found in the printing accounts, which were large. Nearly every account was made out and audited without strict regard to the provisons of the contracts. Lack of technical knowledge in the Secretary of State made it easy to deceive him as to the amount of work done. In one case the excess over the contract price was $18,000. For a $400 job, $2,100 was paid. Furthermore, these two contracts were unauthorized by law. Certain blanks contracted for at the rate of $10 cost the state $20. Other extraordinary accounts were audited. Warrants were drawn on the Treasurer without proper authority. Clerical service in the office was paid for at a high rate. The Committee recommended the creation of the office of Comptroller of the Treasury, as it was impossible for the legislature to act intelligently on every claim presented, and impracticable for the Secretary of State to do so along with all his other duties.[16]

A law of 1899 made provisions for the devising of a systematic and unified system of bookkeeping in the State Departments. Two years later a law was enacted providing that the system devised be put into practice so far as was practicable. It was provided that the Governor might make modifications but the law stipulated that the system adopted must have among others the following characteristics:

1. All moneys received by any person in behalf of the State shall be transmitted to the Treasury or to a State depository designed by the Treasurer. Deposits shall be made at least once a week or oftener if required by the Governor.

2. The Treasurer shall transmit to every person depositing

[16] *Report of Joint Legislative Committee to Investigate the State Departments*, 1858.

money with him a receipt therefor countersigned by the Secretary of State.

3. No money shall be paid out of the Treasury except on a warrant drawn by the Secretary of State, who shall require in all cases an itemized voucher showing for what purpose the debt has been contracted.[17]

The state officers objected to the system devised by the experts, hence Governor La Follette had made a study of the Wisconsin system as compared with the systems of Massachusettes, New Jersey and New York. This investigation revealed that the Wisconsin systems of bookkeeping and accounting were superior to those employed in the other states. The Wisconsin system was found to be characterized by great care, minuteness and detail. It was faulty in that receipts and expenditures were not centralized. This painstaking expert examination of 1902 gave evidence of great thoroughness, accuracy and detail "and a jealous care for the interests of the state which makes it safe to say that every dollar of the public money has been accounted for."[18] In 1905, however, Governor La Follette observed, "Existing laws are wholly inadequate to insure the safekeeping and integrity of the funds and securities of the state in the state treasury." Wisconsin's great reform Governor had reference to the fact that all state moneys on deposit in banks* are drawable by check signed by the state treasurer alone, and that securities owned by the state can be negotiated by his simple endorsement. The Governor declared that unlimited power to dispose of the funds and securities of the state ought not to be lodged in a single officer. Some valuable suggestions were made but the legislature did not act upon them.[19]

[17] *Laws of 1899*, ch. 133; *Laws of 1901*, ch. 433.

[18] *Governor's Message*, 1903, 7, 8.

* "The secretary of state shall draw his warrant on the state treasurer payable to the claimant for the amount allowed him upon every claim or account audited as aforesaid, specifying from what fund to be paid and the particular act or part of act which authorizes the same to be paid." Enacted since this was written. *Laws of 1907*, ch. 139.

[19] *Governor's Message* 1905, 5-8.

II. Budgetary Practice

A law of 1848 ascribed to the Secretary of State as ex-officio Auditor the following duty, "to exhibit to the state legislature at its annual meeting a complete statement of the funds of the state, of its revenues, of the public expenditures during the preceding year, with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditure and distinguishing between such as are provided for by permanent or temporary appropriations and such as require to be provided for by law, and showing the means from which such expenditures are to be defrayed."[20] In 1852 the fiscal year was changed so as to end September 30, and the report indicated above was required to be made to the Governor.[21] The financial history of Wisconsin has been marked by little success in making revenues and expenditures balance. In the first ten years of the state's history, 1848 to 1858, expenses were always in advance of revenues. In 1859 the Governor observed that because of overestimates of revenue and underestimates of expenses a floating debt had been accumulating gradually year by year.[22] In the period 1883 to 1897, except in 1887, no state tax for general purposes was levied. Many times in this period the state treasury was in a sad condition. Many times the state would have been unable to pay its current expenses if the Treasurer had not been able to induce the railroads to pay their taxes in advance of the time when they became due and to secure loans from the banks.[23] Much credit is to be given Governor Scofield for starting a financial reform in 1897. The favorite practice, when the general fund became depleted was to borrow from the trust funds, a practice wholly illegal until 1895, when, after a period of disuse, it was resumed and a law authorizing it was enacted.[24]

[20] *Laws of 1848*, 116, Art. 2, Sec. 10.
[21] *Laws of 1852*, ch. 99.
[22] *Governor's Message*, 1862, 17; 1859, 1.
[23] *Senate Journal*, 1897, 177. *Governor's Message* 1899, 7-8.
[24] *Laws of 1895*, ch. 52; *Laws of 1899*, ch. 147.

Especially in the early years of the state's history a faulty system of auditing undoubtedly increased the expenses of the state. In 1853 the Secretary of State complained that because there was no requirement that claims be passed through his hands he rarely saw a claim before the time of payment. Claims thrown in a mass upon the legislature were passed upon hurriedly by committees in general unacquainted with the facts and having no time for investigation. It was recommended that no claims except those properly denominated legislative expenses be paid until passed upon by the secretary of state or auditor. It was suggested that the plan adopted in 1851 with respect to state printing be made general. This plan provided for the payment of three-fourths of a claim when endorsed by the auditor and the payment of the balance when approved by the proper legislative committee.[25] A law of 1857 made it the duty of the Secretary of State to examine and determine the claims of all persons against the state in cases in which provision for payment had been made by law, and to endorse upon such claims a certificate of the amount due and allowed and from what fund to be paid. A complete list of such audited accounts it was provided should be reported to the legislature. It was further provided that any such claim should be sworn to by the claimant or his agent and certified to by the officer ordering or making the claim.[26]

In 1857 the Secretary of State made the significant observation that the liabilities of the state and the claims upon the treasury of which his department had no knowledge made it impossible for him to present a correct estimate of expenditures.[27] The following quotation from the report of the Secretary of State in 1868 indicates an unsatisfactory working of the budget system. "Any person at all familiar with the ordinary course of legislation regarding the annual expenditures will see at once that it is impossible to more than approximate a correct result, since there are no data for an estimate of the

[25] *Secretary of State's Report*, 1853, 13.
[26] *General Laws*, 1857, ch. 61.
[27] *Secretary of State's Report*, 1857, 89.

appropriations to be made by the succeeding legislature."[28] The report of 1877 reveals a somewhat better condition. "The accuracy of the estimates will, of course, depend largely on the action of the next legislature in making appropriations, but as there will be ample opportunity for a review of such estimates by the legislature before any tax based thereon is levied, any change that circumstances may require, or which legislative action may render necessary can easily be made."[29]

In 1865 the Secretary of State, as Auditor, had complained that while the law had provided for the checking of the auditor by the treasurer the legislation for many years past had been such as to render the former powerless as a check upon the latter. Laws had been enacted authorizing the disbursements of large sums, of the disbursement of which the auditor was entirely ignorant until informed by the treasurer. Such a system made it impossible for the auditor to know the condition of the treasury and to exercise a controlling influence over disbursements as the framers of the Constitution undoubtedly intended he should do.[30]

At this time the financial relations of the benevolent institutions with the auditor's office were also faulty. The law required that "the Secretary of State shall from time to time require all persons receiving money or securities, or having the disposition or management of the property of the State, of which an account is kept in his office, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require." This section was virtually abrogated in part by the practice of paying money directly to the managers of the state benevolent institutions. These managers expended such moneys without being accountable to any one but the legislature. The examination of their accounts by a legislative committee was merely formal and certain to be superficial because of the short time given to the work. It was recommended that the money be drawn on dupli-

[28] Ibid. 1868, 7.
[29] Ibid, 1877, 22.
[30] Ibid, 1865, 78-80.

cate vouchers, filed with and audited by the secretary of state. By 1872 the above defect appears to have been remedied.[21]

III. The System of Funds

The fund system of accounting was adopted in Wisconsin in 1850.*

a. The General Fund.

In the beginning the revenues of this fund were derived solely from the state tax levied in the counties and from the payment of sums due the Territory. From it the ordinary expenses of the state government were paid. In 1851 the fund began to receive revenue from the per mile of line tax on telegraph companies. The proceeds of bond sales, in general, go into this fund. The following additional sources of revenue have been created:

1852—hawkers' and peddlers' taxes.

1853—bank taxes.

1855—railroad and plank road taxes.

1858—life insurance companies' license fees or taxes.

1866—tax on national banks (*Law of April 8, 1865.*)

1872—fire insurance companies' fees and taxes.

1880—interest due on School Fund income. (*Revised Statutes* 1878, Sec. 247.)

1880—annual levy for the State University. (*Revised Statutes* 1878, Sec. 390.)

1881—interest on certificates of indebtedness. These certificates had been given to the trust funds in exchange for bonds of the State. (*Revised Statutes* 1878, Sec. 260.)

1881—tax for maintenance of Industrial School for boys.

1885—license taxes on telephone, railroad car, hail insurance and accident insurance companies.

1891—tax on savings and loan, and trust companies.

1891—tax on log driving and boom companies.

1893—tax on sleeping car companies.

[21] *Secretary of State's Report*, 1865, 80; 1872, 5.

* A list of the funds now obtaining will be found at the end of this chapter.

1896—the State's share of taxes on Street Railway and Electric Lighting Companies.

1899—license taxes on surety, marine, and casualty insurance companies.

1900—license taxes on express companies and freight line companies.

1900—tax on legacies.

1903—vessel tonnage tax (has been abolished).

Other sources are the tax for the support of inmates of state charitable institutions, office fees and miscellaneous sources. Still another source is the one dollar tax on civil suits begun in the circuit courts. The purpose of this tax is to pay in part the salaries of the judges. When the fund system was adopted there was a separate judiciary fund, but it was early merged with the general fund. Because of the failure of clerks of courts to make returns the receipts from the suit tax have never been as large as they should have been.

b. The School Fund.

This fund was created by the sale of lands granted by Congress for common schools. Other sources are the five per cent grant of the net proceeds of federal lands sold in the state, and fines collected in the various counties for breaches of the penal laws. The latter source has not been as lucrative as it should have been because many county and town officers have failed to obey the Constitution in regard to paying into the state treasury these fines. In the first three years of the state's existence, only seven out of twenty-nine counties paid in anything at all. The record for recent years is no more satisfactory. As has been indicated elsewhere, the Federal Government withholds $101,262.33 of the five per cent fund because of Wisconsin's responsibility in the matter of the Milwaukee and Rock River Canal. Since 1866 a tax of $7,088.66 has been levied to offset this loss to the school fund. In 1850 Congress granted to the state all the swamp and overflowed lands within its borders, seventy-five per cent of the net proceeds of the sale of which was dedicated to the support of schools. In 1865 this source was cut off by the abolition of the swamp land fund. Instead it was provided that twenty-five per cent of the annual

income of the Normal School Fund should be paid into the School Fund until the latter should amount to $200,000. Still other sources are the five per cent penalty for the non-payment when due of interest on school land certificates and loans from the School Fund, moneys accruing from forfeiture or escheat and from trespass penalties having reference to school lands. At the time of the Civil War, money paid for exemptions from military duty went into this fund. In 1901 the legislature attempted to create a new source by providing that persons, companies, or corporations cutting ice from meandered lakes in Wisconsin and shipping it out of the state should pay a license fee of ten cents a ton and that the proceeds of this tax or fee charge should go into the common school fund. The question of the validity of this law came before the Supreme Court of the State the next year in the case of *Rossmiller vs. the State.* The Court held the law to be in contravention of the fourteenth amendment to the Constitution of the United States guaranteeing to all persons within the jurisdiction of a state equal protection of the laws. A state has no right to appropriate ice formed on waters within its borders. The extent of its interference with such ice cannot exceed what may be necessary to the insuring to all a common enjoyment of such ice. The state can exercise only police power over such waters. Accordingly the law was repealed in 1903.[32]

c. The University Fund.

The University Fund arises from the sale of university lands and the five per cent penalty for non-payment when due of interest on university land certificates and loans from the University Fund. The Agricultural College Fund consists of the proceeds of the sales of the 240,000 acre grant for the support of an institution in which the science and practice of agriculture shall be taught.

d. The Normal School Fund.

In 1857 it was enacted that twenty-five per cent of the net proceeds of the sale of swamp and overflowed lands should go into a Normal School Fund. (*General Laws*, 1857, ch. 82.) A law of 1859 provided that the Normal School Regents should

[32] *Laws of 1901*, ch. 470; *Laws of 1903*, ch. 11; *114 Wisconsin*, 169.

distribute the income of the fund among the following institutions which maintained or should establish and maintain a normal department; colleges, universities and girls' seminaries, owning a certain amount of property, and union or high schools. In 1889 it was provided that the Normal School Fund should receive one-half of the income from the sale of swamp and overflowed lands and lands granted in lieu of such lands. (*Laws of 1889,* ch. 340.)

e. The Swamp Land Fund.

This was created in 1856 and arose from the sale of lands granted to the state by an Act of Congress approved September 28, 1850, entitled "an act to enable the state of Arkansas and other States to reclaim swamp and overflowed lands within their limits." The state dedicated seventy-five per cent of the proceeds of the sale of these lands to schools; and in 1857, twenty-five per cent, to the normal schools. (ch. 82.) In 1865 it was enacted that one-half should go to the Normal School Fund and one-half to the Drainage Fund. (*Laws of 1865,* ch. 537); in 1889 the same disposition was made of the proceeds derived and to be derived from the sale of lands granted in lieu of swamp and overflowed lands. Prior to the Swamp Land Grant Congress had issued warrants to soldiers of the Mexican War to locate on any public lands and as some of these locations had been made on Wisconsin swamp or overflowed lands, the two acts were in conflict. In 1855 therefore Congress made an adjustment of the difficulty through an act entitled "an act for the relief of purchasers or locators of swamp and overflowed lands." (*Laws of 1889,* ch. 340.)

f. The Drainage Fund.

Prior to 1865, this fund received twenty-five per cent of the proceeds of the sales of swamp and overflowed lands; after that year, fifty per cent.

g. The Whitewater Normal School Building Fund.

$25,000 was given by Whitewater for a normal school building at that place and $18,000 was appropriated from the Normal School Fund. (*Laws of 1866, 1867.*)

h. The Platteville Normal School Building Fund.

$15,000 was appropriated from the Normal School Fund for the completion of the normal school buildings at Platteville.

i. The Oshkosh Normal School Building Fund.

In 1869, the city of Oshkosh gave $30,000 for a normal school building.

j. The Capitol Fund.

This fund arose from the sale in 1857 of the ten sections of land granted to the state by Congress for the completion of public buildings. In 1860 this fund was merged with the general fund.

k. The War Fund.

The War Fund arose from the sale of War bonds and from appropriations for war purposes.* In 1868 this fund was closed and covered into the general fund.

l. The State Insurance Fund.

In 1903 Wisconsin made provision for insuring its buildings itself. The state buildings are insured at ninety per cent of their value and at the average rate charged by reliable companies. Sixty per cent of the premiums so determined is covered into the insurance fund. (*Laws of 1903,* ch. 68.)

m. The Railroad Farm Mortgage Fund.

A law of 1862 provided that every railroad company that had taken payment for any or all of its capital stock or bonds in notes or bonds secured by mortgages on the real estate of the purchasers and had sold, hypothecated or otherwise disposed of such notes or bonds for the purpose of securing money for the payment of its debts should pay annually into the Railroad Farm Mortgage Fund twelve per cent of the amount of such mortgages and should continue to make such payments until the amount of the mortgages with interest at six per cent had been paid. The liens upon the fund were not to exceed the amount that the bona-fide holders of the stock or bonds had paid for them. It was provided that certain railway bonds should have a lien of ninety per cent; others of seventy; still others, of fifty. No railroad, however, was obliged to make the above described payments unless it had assented to the law providing for the fund. (*Laws of 1862,* ch. 330.)

There have been several other funds in addition to those de-

* Vide Chapter on Public Debt and State Credit.

scribed above. Some of these are found in the following list of funds now obtaining:

1. The General Fund.
2. The School Fund.
3. The University Fund.
4. The Agricultural College Fund.
5. The Normal School Fund.
6. The Drainage Fund.
7. Delinquent Tax Fund. (This arises from taxes collected on state lands.)
8. Indemnity Swamp Land Fund.
 This arose from the conflict between the Swamp Land grant and the grant to the soldiers of the Mexican War.
9. The Calumet and Manitowoc Counties' Idemnity Fund.
10. The Redemption Fund.
 Money for the redemption of forfeited state lands is paid into this fund.
11. The Deposit Fund.
 Into this fund go surpluses from the resale of forfeited state lands over and above the amount owed the state, interest, costs and penalty.
12. The Menominee Indian Reservation Trespass Fund.
13. The Allotment Fund.
 General Laws, 1862, Sec. 3, ch. 190, reads,
 "The State Treasurer is hereby authorized and directed to receive such sums of money as may be placed in his hands by a volunteer making an allotment and shall dispose of the same according to the order and direction of such volunteer."
14. The Medical Examiner's Fund.
15. The State Insurance Fund.
16. The Memorial Hall Fund.
17. The Hunting License Fund.
18. The Inspection of Oils Fund.
19. Forest Reserve Fund.

CHAPTER VII

THE GENERAL PROPERTY TAX

I. The General Property Tax in the Territorial Period, 1836 to 1848

The Act providing for the organization of the Territory of Wisconsin placed two specific limitations upon the taxing power of the Territorial Legislature. No tax was to be imposed upon the property of the United States. The lands or other property of non-residents were not to be taxed at a higher rate than the lands or other property of residents. Of course, any tax legislation, just as any other legislation, was null and void if disapproved by Congress.

The first law providing for a Territorial revenue was enacted in 1838. It provided that the counties should retain from the taxes collectable each year five per cent thereof to be taken from the first moneys received. This five per cent was to be kept by the county treasurers and paid out on drafts issued by the Territorial Treasurer.[1] The tax due for 1838 was remitted in 1839.[2] In 1843 it was provided that there should be levied in the several counties and towns a tax of such a percentage as the Legislature might from year to year prescribe. The tax for the year 1843 was to be three-eighths of one mill in the counties of Milwaukee, Racine, Jefferson, and Crawford, and five-eighths of one mill in all the other counties. Taxes were to be paid in gold or silver coin or in warrants drawn by the auditor on the treasurer of the Territory.[3] Through an oversight, however, the bill of

[1] *Laws of 1838*, No. 93.
[2] *Laws of 1839*, No. 14.
[3] *Laws of 1842-43*, 65.

1843 was left without an enacting clause; when it came up the next year it failed to pass, and it never became a law.[4] In 1845 a law was enacted providing for a tax of one and one-half mills on the true cash value of land, exclusive of improvements either in buildings or otherwise, and also of all merchandise or stock actually paid into any incorporated company. County scrip was not to be received in payment of the Territorial tax, but evidences of Territorial indebtedness, except such as related to the Milwaukee and Rock River Canal, were to be received.[5] The chief purpose of this tax was to provide for the paying off of the Territorial debt. The significant feature of the tax is that it taxed land exclusive of improvements. It will be seen, however, that such a feature was common in the county taxation.

The laws bearing on county taxation were both general and specific. A law of 1837 provided that all lands, town lots and outlots with their improvements, and personal property with certain exceptions should be taxed. An amendment of 1839 exempted improvements in buildings and otherwise. In 1841 merchandise and stock actually paid into any incorporated company, goods, wares and merchandise were declared taxable. By the same law, moneys, goods, chattels, chattels real, credits over and above debts, public and corporation stocks, and shares in steam or other boats were made taxable in the counties of Milwaukee, Racine, Crawford, and Jefferson. The year before it had been enacted that all real and personal property in Crawford and St. Croix counties, whether belonging to individuals or corporations should be taxed, except that property exempted by law from execution should not be levied upon and debts should be subtracted from the value of personal property. A law of 1845 provided for the taxation in Portage and Walworth counties of improvements on lands and also of personal property, which was declared to include moneys, goods, chattels, chattels real, debts due from solvent debtors in excess of debts owed, public and corporate stocks, and shares in steamboats or other vessels. A law of 1847 extended the law of 1845 to apply to Dodge county and another law of the same year made it applicable to

[4] Strong, Moses M., *History of Wisconsin Territory.* (Madison, 1885), 415.
[5] *Laws of 1845*, 1.

the township of Sun Prairie in Dane County, and a law of 1848 made a further extension to Rock County.[6]

As might be supposed, the rate of local taxation was restricted by law.[*] The law of 1837 placed the limit of county taxation at five mills; in 1839 it was made ten mills; and in 1845 the limitations were made ten and one-half mills for general expenses and two and one-half mills for schools. The law of 1839 compelled counties to levy a school tax of one-fourth of one per cent. In 1840 the levying of a school tax was made optional with the counties, and in 1843 it was provided that if a county failed to levy a school tax, the districts in the county might do so, but only for the payment of teachers. Many special laws were enacted authorizing districts to levy taxes to raise funds for the erection of school buildings.[7]

The organic act exempted from taxation the property of the United States. The Territorial law of 1837 providing for county taxation declared exempt household furniture to the amount of $75, libraries, tools of mechanics, and agricultural implements.[8] Various other laws exempted the property of incorporated literary, benevolent, charitable and scientific societies, public libraries, school houses, houses of public workship, academies and seminaries and the land on which such buildings stood. The absence of any limitation on the amount of land to be exempted is indicative of the newness of the country and of lack of caution and foresight on the part of the legislators.

The provisions respecting delinquent taxes were as follows. Delinquent taxes were collectable by distress and sale of goods and chattels and if no chattels could be found, by the sale of the land taxed. Lands sold for taxes could be redeemed at any

[6] *Laws of 1837-38*, No. 68; *revised statutes*, 1839, 44; *Laws of 1840-41*, No. 4; *Laws of 1839-46* No. 53; *Laws of 1845*, 36; *Laws of 1847*, 48, 125; *Laws of 1848*, 127.

[*] Bridge taxes were limited to three-fourths of one per cent on real and personal property; town taxes were limited to one-half of one per cent on real property; town taxes were limited to one-fourth of one per cent on personal property. *Laws of 1836*, No. 13, also p. 67; village taxes in Milwaukee were limited to one-half of one per cent on real and personal property. *Laws of 1837*, No. 56.

[7] *Laws of 1837*, No. 68, sec. 2; *revised statutes*, 1839, 44; *Laws of 1845*, sec. 11, p. 3; *Laws of 1839-40*, No. 57; *Laws of 1840-41*, No. 1; *Laws of 1843-44*, 40.

[8] *Laws of 1837*, No. 68, sec. 1.

time within two years after their sale, by paying to the purchaser, his heirs or assigns the purchase price with interest at thirty per cent, also the taxes, costs and charges that had been paid by the purchaser, his heirs or assigns. Lands of idiots, insane persons, and married women could be redeemed at any time within five years after their sale for unpaid taxes. Lands of minors were redeemable when such persons became of age and for one year thereafter.[9]

It has been noted that the organic act forbade the taxation of the property of non-residents at a higher rate than the property of residents. Notwithstanding this prohibition in the organic law of the Territory, Governor Dodge in 1838 recommended a tax on the property of non-residents for the purpose of raising money for public schools. He held that the taxing powers of the legislature should be construed liberally and in a way conducing most to the welfare of the people of the Territory. What, he asked, could conduce more their welfare than a system of public schools? His argument is rather amusing and yet he was able to point out that the organic act strictly interpreted had perhaps already been violated, for the exemption of improvements on lands was equivalent in a way to a higher tax on the property of non-residents, since unimproved lands, which did not profit by the exemption, were owned for the most part by persons outside of the Territory.[10]

Only one of the Territorial governors, James D. Doty, assailed

[9] *Revised Statutes*, 1839, 44.

In addition to property taxes the counties were authorized to levy license or business taxes. In 1836, the first year of the Territory's existence, county supervisors were authorized to impose an annual license tax of $108 on groceries, "victualizing houses and ordinaries with permission to sell spirituous liquors and wines by the small measure." The next year the counties were authorized and directed to levy the following license taxes:

1. for keeping a tavern, an annual tax of not less than $5.00 nor more than $50.00;

2. for retailing spirituous liquors, beer, ale, cider, to be drunk on the premises, or for retailing groceries, an annual tax of not less than $100;

3. for selling merchandise, an annual tax of not less than $10.00 nor more than $50.00;

4. for hawking wooden or brass clocks, an annual tax of not less than $100 nor more than $300;

5. for running a ferry, an annual tax of not less than $5.00 nor more than $20.00.

[10] *Journal of the House*, 1838, 7.

the tax system of the Territory. In his message of 1841, Governor Doty declared that the system of taxation obtaining was regarded throughout the Territory as, "unequal, illegal, and highly oppressive." Large sums were collected as taxes, but few improvements were made. The people complained of being burdened with heavy taxes without receiving any apparent benefits from the government. The tax system operated to confiscate the property of bona-fide settlers and to transfer it to tax certificate speculators. The Governor recommended that the Territory purchase all lands sold for taxes. He saw no necessity for such high taxes as were being levied for county purposes. He attributed them to the protracted sessions of the courts, the great number of county and township officers, their high pay and the great number of days that they were employed. Governor Doty recommended that the duties of the county commissioners and their clerks be performed by the justices of the peace, that assessments be made by the registers of deeds and that the taxes be collected by the sheriffs. It was pointed out that in new communities such duties were usually discharged without compensation. The Governor complained that instead of the honor of an office's being regarded as its reward, the pernicious notion prevailed that offices were created to put money into the pockets of the holders. The Governor held that taxation of lands irrespective of improvements worked a violation of the provisions of the Ordinance of 1787 and of the act for the organization of the Territory that the lands or other property of non-residents should not be taxed higher than the lands or other property of residents. This violation was worked, he affirmed, because wild lands were owned for the most part by non-residents. He complained that such lands were never assessed at less than $2.50 and sometimes at $7 and $8 an acre. He protested against the selling of land for unpaid taxes, asking, "Shall a farm of 80 acres be sold to satisfy a tax of $2?" In some counties, it was complained by His Excellency, nine-tenths of the settlers occupied United States lands and consequently were exempt or practically exempt from taxation, while the other tenth bore the whole burden of the cost of government. He questioned the right of the legislature to provide that land sold for taxes

could not be redeemed after three years. His general conclusion was that the whole system of taxation was especially favorable to tax-title speculators. Two years later he declared that complaints of heavy taxation continued, and he recommended a reduction in the number and amount of the taxes.[11]

Governor Doty's attack on the system of taxation was so vigorous that the matter was referred to the Judiciary Committee of the Council. In a majority report, the committee upheld the system. Apropos of excessive taxation asserted by the Governor, the committee pointed out that the amount of taxes was determined by the people themselves through their local officers. The committee was non-committal on the question as to whether taxes were too high, but was of the opinion that as long as the officers who determined the amount of taxes and also to a great extent the amount of county expenses were elected by the people, there could be no great danger of over-taxation. The exemption of improvements on land, an exemption that affected only about half of the population of the Territory, was justified on the ground of social expediency, since it served as an encouragement to the cultivation of the soil. The committee averred that the taxation of lands irrespective of improvements did not violate the provision of the Ordinance of 1787 and of the Organic Law of the Territory that the lands or other property of non-residents be not taxed higher than the lands or other property of residents.* The Territory was bound merely to tax all property of the same kind in the same way irrespective of whether the owners were residents or non-residents. Here was involved the familiar question of the right and limits of the power to classify property for purposes of taxation.[12] The reasoning of the committee was sound; there was a burden lying upon the opponents of the exemption of improvements on land of proving an intentional discrimination against non-residents. This point, however, the committee did not appreciate. It merely declared the right to classify.

[11] *Journal of the House*, 1841, 21–24; ibid., 1843–44, 6.

*The Ordinance of 1787 provided that non-resident proprietors should not be taxed higher than resident proprietors.

[12] *Journal of the Council*, 1841–42, 635–50.

The *Wisconsin Enquirer* in a vigorous editorial attack on Governor Doty asserted that his solicitude regarding taxes was due to his connection with speculators in public lands. The editor of the *Enquirer* maintained also that the transference of the duties of the county commissioners to the justice of the peace, the duties of the assessors to the registers of deeds, and the duties of the tax collectors to the sheriffs would strike a blow at popular government and would give the Governor complete and unlimited control in the Territory, since functions theretofore discharged by elected officers would have been transferred to officers appointed by the Governor, who was declared to be a Whig attempting to parade in the garb of Democracy.[13] Whether this charge be true or not, Governor Doty was a politician and there is some evidence that he had connections that might make doubtful the validity of his claim of being a friend of the people. However that may be, there can be no doubt that the burden of taxation was sufficiently great to postpone statehood for several years after it was legally possible, as the people felt unable or unwilling to pay the additional taxes that would come with a change of political status.

The most characteristic feature of taxation in Wisconsin Territory was the effort to adapt taxation to different local conditions. The exemption of improvements is also well worthy of notice, an exemption that both worked a discrimination against non-settlers and tended to encourage improvements. The somewhat extensive employment of license taxes in addition to the general property tax should be noted. In general debts were exempt by subtraction from credits. In two counties, debts could be subtracted from all personal property. Taxation in Wisconsin Territory presented all the lack of uniformity and all the simplicity that one might expect to find in a new and almost, if not entirely, agricultural community.*

[13] *Wisconsin Enquirer,* Dec. 20, 1841.

* Closely connected with differences in methods of taxation in different counties is the form of local government. When the Territory was organized southern people were very numerous in the lead district and consequently in 1837 the county commissioner system of government was adopted. Under the authority of Michigan the government had been nominally of the township type, but only nominally. In 1838 towns were organized for judicial and

II. The General Property Tax in the State of Wisconsin

A. INTRODUCTORY

If much legislation on taxation would insure a perfect system, Wisconsin's system would be a marvel of perfection. The history of taxation in this state is made complicated and obscure by a multiplicity of legislative acts and amendments and by a great number of court decisions,* in themselves confusing because of the confusion with which they were obliged to deal. The Tax Commissioners appointed by the Governor in 1867 to codify the tax laws and to suggest reforms found no end of confusion in the laws. Every legislature since the publication of the Revised Statutes of 1858 had altered or amended the laws relating to taxation. In several instances, numerous and important alterations and additions had been made with the result that many provisions were inconsistent with one another. When a new law was enacted it was simply declared that "all laws inconsistent with or contravening the provisions of this act are hereby repealed," and in many cases the commissioners found it difficult if not impossible to determine precisely what was inconsistent with the new law. It was pointed out also that defects in the drafts of amendments, or of reference or repealing clauses produced uncertainty, confusion, and misconstruction in many localities. Frequent change in the laws worked against efficient administration. Besides, the commissioners averred, the legislators were given to piling blunder upon blunder in their attempts to improve the system of taxation.[14] The Supreme Court of the state has in some cases met with great difficulty in

police purposes and given power to provide for roads. A great influx of people from New York State, especially into the eastern counties, led to the adoption of an act giving counties local option as to government and providing for an election to decide the matter (1841). When Wisconsin was admitted into the Union, in 1848, only five counties, Grant, Green, La Fayette, Iowa, and Sauk, still clung to the commissioner system. *Report of Wisconsin Tax Commission of 1898*, 17.

* Up to 1897 there had been 914 decisions. *Report of Wisconsin Tax Commission*, 1898, 25.

[14] *Report of Tax Commissioners of 1867*, 3, 10.

its attempt to reach sound conclusions through the maze of legislation and litigation having to do with taxation. In 1865 the Court said that it would probably be impossible to place any construction on the assessment laws that would not be repugnant to some of its provisions.[15]

New York has served as a model to a considerable extent for Wisconsin tax legislation, as well as for other legislation. In the convention that framed the Constitution for the state, twenty-five of the fifty-six members were from New York.[16] Nearly all of the provisions of the first state tax law, the law of 1849, relating to "Property to be Taxed," "Duties of Assessors," "Equalization of Assessments," and "Collection and Return of Taxes" were taken with but slight alterations from the New York Statutes. Many of the provisions of the New York Statutes of 1829 are found in almost the same words in the Wisconsin Statutes of 1849 and also of 1898, and yet the system obtaining in Wisconsin in 1898 was unique in many of its features.[17]

A significant and important recent development in Wisconsin taxation is the movement toward centralized control. In 1901 the State Tax Commission was given general supervision of the system of taxation throughout the state, general supervision of all assessors and boards of review.[18] A law of 1905 provides that the State Tax Commissioners whenever a complaint is made and they are satisfied from a summary hearing that the assessment of property in any assessment district has not been in substantial compliance with law and that the public interest would be promoted by a re-assessment, may appoint and authorize one or more persons to make such re-assesment. Local and county officers are required by the law to render all necessary assistance to these state assessors. The expenses of re-assessment are to be paid by the state and charged to the district. Any person appointed under this law who willfully neglects or refuses to perform his duty shall forfeit to the state not less than $50 nor more than $250.[19] An-

[15] 21 *Wisconsin*, 303.

[16] 25 members were born in New York; 24, in New England; 7, in foreign countries.

[17] *Report of Wisconsin Tax Commission*, 1898, 11, 22.

[18] *Laws of 1901*, ch. 220.

[19] *Laws of 1905*, ch. 259.

other law of the same year provides that upon the appeal of any town, city, or village in a county from the apportionment of taxes by the county board, the state board, which is the tax commission, may review and re-determine the value of the property in the county. If inequality is found it shall be corrected in the next tax levy. The expense of the work shall be borne by the county.[20] This law repealed the special commissioners law of 1880 which provided that when the mayor or common council of any city, the president and board of trustees of any village or the supervisors of any town deemed that the property in such city, village, or town had been unjustly valued in the making of the county apportionment of taxes, they might procure the appointment, by the judge of the circuit in which their county was situated, of three commissioners, not owners of real estate in that county, to bring about a just relation between all the valuations of real estate in the county. The valuations determined by the commissioners were to be final and conclusive and in the assessment of the next year, towns, villages or cities, overtaxed the preceding year were to be credited with the excess and vice-versa. The expenses and compensation of $4 each per day of the commissioners were to be paid by the county, but if the findings of the commissioners were adverse to the city or towns, that procured their appointment, that city or town was to reimburse the county. An amendment of 1889 provided that if the decision was favorable to the local body that had procured the appointment, the expense was to be apportioned by the county among the towns etc., the valuations of which had been raised and in proportion thereto. An amendment of 1901 put the charge on the rest of the county.[21]

The special commissioners law was objected to on the ground that such a commission interfered unduly with local government and violated the rights of local self-government. The State Supreme Court, however, in the case of the *State of Wisconsin ex rel. Brown County vs. Myers, Judge etc.*, which was tried in 1881, upheld the law, declaring that the whole matter of assessing and valuing property for taxation is under the con-

[20] *Laws of 1905*, ch. 474.
[21] *Laws of 1880*, ch. 291; *Laws of 1889*, ch. 201.

trol of the legislature and that local assessments might be made by a State Board, if the legislature should so direct.[22] Twenty years later in the case of the *State ex rel. Ellis vs. Thorne,* the Court reiterated and sustained the decision of 1881.[23] These decisions are of very great importance, since in so far as the law and the constitution are concerned they make the way clear to a greatly needed reform in taxation administration. The law of 1901 and the two laws of 1905 noted above mark a significant advance in the direction of this reform. Wisconsin as well as every other state has had an unfortunate experience with elected assessors.* Perhaps the time is not far distant when this progressive state will have the property of its citizens assessed by officers who will give all of their time to the work, who will be appointed by the State Board under civil service rules and who will not be hampered in the dischage of their duties by any dependence, political or otherwise, upon the persons whose property they will assess for taxation.

B. PROPERTY TAXED AND PROPERTY EXEMPTED

In his first message, the first Governor of the State criticized in no uncertain terms the Territorial system of taxation then still in force. Governor Dewey based his criticism very clearly upon the benefit theory of taxation. He pointed out what has already been noticed, that in some counties real estate irrespective of improvements, merchandise and stock in incorporated

[22] 52 Wisconsin, 628.

[23] *112 Wisconsin,* 81.

* The situation with respect to assessments in the city of Fond du Lac is an interesting commentary on elected assessors. Two of the assessors are fire insurance agents; the third is the father-in-law of one of the others. Notwithstanding the disgraceful, outrageous way in which these assessors have administered their offices, they have been assessors for a number of years and it is said that they cannot be beaten at the polls. Prominent and substantial citizens have told the writer that persons who insure their property with a company represented by the assessors get a low assessment; those who do not are assessed high. These assessors use their public office to coerce people into giving them business; they violate the laws of the State and deal unjustly with its citizens in order to promote their own private ends, and yet they are elected by the people. Since this was written these assessors have been defeated at the polls.

companies were alone taxed; while in others, improvements on real estate and personal property were taxed also. He might have noted further that in five counties, Washington, Portage, Rock, Calumet and Dodge, only real estate was assessed.[24] The Governor maintained that such a system was unjust, as it did not bear equally on all branches of industry and he proceeded to declare that the system was in violation of the true principle of taxation in republican governments, namely, that since the government extends equal protection to all property, all property both real and personal should be taxed "in the same ratio" according to its value. Taxes were the support rendered to the state in return for the protection that it afforded and were equivalent to that protection.[25] It is interesting to contrast this view of 1848 with a view expressed in 1898 in the following words, "The general property tax [by which much the greater part of public revenues is obtained] as a system is based upon the principle that the individual citizen should contribute to the support of government in proportion to his *ability*, measured by his property."[26]

The first state tax law, approved August, 1848, provided for a tax of four and one-half mills on the dollar valuation of all lands, not exempt by the laws of the United State or of the state, irrespective of improvements in buildings or otherwise, and of all merchandise and of stock actually paid into any incorporated company. Gold, silver and auditor's warrants were alone to be received in payment of these state taxes.[27]

The next year there was enacted a new law, which provided in great detail for the assessment and taxation of property in the state. This law taxed all real and personal property not legally exempted. Real property was defined as including land, buildings, fixtures, improvements on land, and all mines, minerals, quarries and fossils in and under the same. Personal property* was declared to include all goods and chattels, moneys and effects, all boats and vessels whether at home or

[24] *Secretary of State's Report*, 1848.
[25] *Governor's Message*, 1848, 5-6.
[26] *Tax Commission Report*, 1898, 28.
[27] *Laws of 1848*, 47.
* Options on State lands were taxed as personal property.

abroad, and all capital invested therein, all debts due or to become due from solvent debtors, whether on account, contract, note, mortgage, or otherwise, all public stocks or stocks of incorporated companies† and such part of the capital of incorporated companies, liable to taxation on their capital, as was not invested in real estate.[28] The state tax for 1849 was payable in gold or silver, but an amendment of that year provided that evidences of state indebtedness could be received from county treasurers in payment of state taxes.[29] Ten years later the words "gold and silver" were struck from the tax laws.[30] The property of bridge, turn-pike, plank road and railroad companies was taxable locally and companies taxed on their property were not liable to taxation on their capital.[31] By a law of 1859 personal property was defined as including every tangible thing that is a subject of ownership and does not form any parcel of real property. Tax certificates, judgments, notes, bonds, mortgages, all other evidences of debt secured by a lien on real estate, capital stock, undivided profits and "all other means not forming capital stock," shares or an interest in boats, ships, and vessels within or without the State were enumerated as personal property. In 1893 it was provided that leaf tobacco either in the hands of the grower or dealer be taxed where located on the first of May unless it were actually in transit. A law of 1899 added to the category, personal property, ice cut and stored for shipment.[32] By an Act of 1865 improvements on lands entered or to be entered under the Homestead Act, approved May 20, 1862, were made taxable as personal property.[33]

† No person was required to include in his list of personal property a part of the capital of any company or corporation that was by law exempt from taxation or that was required to list its capital and other personal property as a company or corporation, nor any part of the capital stock of any company or corporation that was required to pay taxes on its capital, profits or dividends. Corporations were taxable on stock and personal estate unless otherwise provided.

[28] This Act approved Mar. 29, 1849 is to be found in pamphlet form. The pamphlet is labeled "*Acts Relative to Taxes, 1849.*" Vide also: *Revised Statutes*, 1849, ch. 15.

[29] *Laws of 1849*, ch. 125.

[30] *Laws of 1859*, ch. 124.

[31] *Revised Statutes*, 1849, ch. 15, sec. 8.

[32] *Laws of 1859*, ch. 167, sec. 2; *Laws of 1893*, ch. 180; *Laws of 1899*, ch. 346.

[33] *Laws of 1865*, ch. 538, sec. 53.

From 1895 to 1905 boats, vessels, etc., were subject to special taxes.[34]

The law of 1849 exempted all property of the United States and of the state, the public property of the several counties, cities, villages, towns and school districts used or intended to be used for corporate purposes, except lands bid off for counties at tax sales,* the personal property of all literary, benevolent, charitable and scientific institutions incorporated in the state—in 1852 of all such institutions within the state—and such real estate as is actually used for the purposes for which they were incorporated, the property of religious bodies, when used exclusively for religious or school purposes, burial grounds and tombs, public libraries and all property belonging to or connected with them, the property of Indians who are not citizens, except lands purchased by them, personal property exempted by law from execution, not exceeding in value $200.[35] There was an exemption also of the personal property of persons who, because of infirmity, age or poverty, might in the opinion of the assessors be unable to contribute toward the public charges. The owners of shares in companies taxed on their capital were not taxed on such shares.

In 1857 the property real and personal of agricultural societies organized in accordance with the laws providing for such organizations was declared exempt. Two years later the amount of land belonging to scientific, literary, or benevolent institutions to be exempt was limited to forty acres, but several special acts exempted large tracts for a certain period of time. In 1862 for example all of the real estate of Lawrence University, not exceeding 10,000 acres nor 2,000 in any one county, was exempted for five years. The property of such institutions when

[34] *Laws of 1895*, ch. 283; *Laws of 1901*, ch. 192: *Laws of 1905*, ch. 487.

A tax of 3 cents per net ton, to be divided between the state and the county in which is situated the "port of hail."

* Later such lands were exempt after they had been held by a county for two successive years. *Laws of 1869*, ch. 166.

[35] *Revised Statutes*, 1849, 138, 139; *Laws of 1852*, ch. 293.

In 1887 the endowment funds and the real and personal property of public library associations organized under the laws of the state, which, or the income from which, is used or invested for the purposes for which such associations are organized were made exempt. *Laws of 1887*, ch. 465.

it is leased is to be taxed unless it be land granted by Congress for religious or educational purposes. In 1878 the forty acre limit was reduced to ten acres. Parsonages whether occupied by the pastor or rented for his benefit were exempted. The law of 1859 exempted provisions and fuel necessary to maintain the family for six months, also wearing apparel and family pictures, and family libraries not exceeding in value $100. Each and every person was declared to be entitled to exemption on personal property, excepting moneys and credits, horses, cows, etc., to an amount not exceeding $100. A law of 1861 made the exceptions, money and credits, horses, pleasure carriages, gold and silver, watches, piano fortes and melodeons. In 1865 state bonds not on deposit with the comptroller were exempted, state bonds, however, that insurance companies should refuse to deliver at par to the state on January 1, 1870, were to be taxed.[36] The law of 1859 exempted also pensions from the United States or from any state and salaries or payments to be received for labor or services, which incomes might otherwise be classed among credits. Growing crops were exempted also.

A law of 1866 exempted members of volunteer fire companies belonging to the State Firemen's Association from paying the poll tax and exempted also their real or personal property or both to the amount of $500. Three years later it was provided that this property exemption was not to be granted in cases in which the fireman was paid by his city or village.[37]

Lands granted, by an Act of Congress approved June 3, 1856, to Wisconsin to aid in railway promotion were exempt from taxation for various periods while they were being held by railroad companies. The land of the Tomah and Lake St. Croix Railroad Company was in 1864 exempted for ten years. In 1866 a general exemption of such land until June 3, 1871, was declared. By a law of 1867 the lands granted to Wisconsin by Congress for a military road from Wausau in Marathon County to Lake Superior were exempted for five years after they should have been patented or for so much time as they remained in the

[36] *General Laws*, 1857, ch. 45; ibid., 1859, ch. 167; ibid., 1861, ch. 91; ibid., 1862, ch. 267; ibid., 1865, ch. 320, secs. 12, 13; *Revised Statutes*, 1878, ch. 48, sec. 1038, art. 3.

[37] *Private and Local Laws*, 1866, ch. 484, sec. 7; *General Laws*, 1869, ch. 165.

possession of the persons who had received them for building the road. A law of 1897 exempts from taxation armories owned by regiments, battalions or companies of the Wisconsin National Guard, but they are subject to special assessments.[38]

In 1868 a law was enacted exempting the property of insurance companies organized in the state and the property of railway companies. The tracks, right-of-way, depot grounds and buildings, machine shops, rolling stock and all other property of railroads necessary to their operation were declared to be forever exempt from taxation. Such railroad property is, however, to remain liable to special assessments for local improvements within cities and villages, and the land owned or claimed by railroads and not adjoining their tracks remains taxable. This law of 1868 simply gave emphasis to the gross receipts tax law of 1854, which exempted the property indicated above. An amendment of 1889 extended the law of 1868 to pontoon or pile and pontoon railroads. The Supreme Court of the State decided in the case of the *Chicago, Milwaukee and St. Paul Railroad Company vs. the City of Milwaukee,* tried in 1895, that the improvement for which an assessment is levied on railroad property must clearly benefit the railroad. In this particular case it was decided that no special benefits such as can justify an assessment accrue to a railroad right-of-way by the improvement of an adjoining street.[39]

As early as 1864 Wisconsin sought by preferential treatment in taxation to encourage the formation of corporations for mining, smelting or manufacturing iron, copper, lead, zinc, silver, or other ores or minerals and for other manufacturing purposes. Every corporation engaged in mining copper was to be taxed $1.00 on every ton of copper mined. Iron mining corporations were taxed ten cents a ton. Coal mining corporations were taxed one-half a cent a ton; corporations mining and manufacturing lead, twenty-five cents a ton. These taxes were in lieu of all other taxes except on property owned by the companies but not used in their business. In lieu of all other taxes, manufacturing corporations are by this law required to pay a tax of one-half of

[38] *General laws,* 1864, ch. 324; ibid., 1866, ch. 73; ibid., 1867, ch. 5; *Laws of 1897,* ch. 380 sec. 1038, par. 21.

[39] *Laws of 1868,* ch. 180, secs. 13, 14; *Laws of 1889,* ch. 285; *89 Wisconsin,* 506.

one per cent on the amount of capital stock paid up and on money borrowed, which for purposes of taxation is considered as capital stock. In 1883 the property of corporations or associations organized under the laws of the state used exclusively for the purpose of manufacturing oxide of zinc or metallic zinc from the native ores of the state was made exempt for three years. By a law of 1897 factories for the manufacture and refining of beet sugar and all real and personal property used in connection with the process were exempted for five years from all taxes except special assessments for local improvements.[40]

A law of 1893 exempts wagons with tires three inches wide or more owned by farmers and used by them in their capacity as such. Two years later sleighs having a gauge of four feet six inches were made exempt.[41]

A return will now be made to the exemption of personal property in general. An amendment of 1891 declared exempt wearing apparel, libraries, family portraits, kitchen furniture, growing crops and $200 worth of household furniture and other personal property. In 1893 the law was again changed. Wearing apparel, family portraits and private libraries not exceeding in value $200 were made exempt, also kitchen and other household furniture not exceeding in value $200. An amendment of 1903 exempts one piano, organ or melodeon or other musical instrument provided that the value of the same added to the value of the kitchen or other household furniture does not exceed $200. Another law of 1903 makes the following specific exemptions:

1. The tools of a mechanic used in his trade, and farm and garden tools not exceeding in value in the aggregate $50.
2. One bicycle used by the owner, but no machine propelled in whole or in part by mechanical power.
3. One sewing machine kept for the owner or his family.
4. Firearms kept for the use of the owner, but not exceeding in value $25.
5. Not exceeding five swarms of honey bees kept for the use of the owner and his family.
6. Poultry not exceeding in value $25.

[40] *Laws of 1864*, ch. 166. Secs. 20, 21; ibid., ch. 394; *Laws of 1883*, ch. 203; *Laws of 1897*, ch. 158.

[41] *Laws of 1893*, ch. 151; *Laws of 1895*, ch. 270.

7. Farm animals born after the 31st of December next preceding the day of assessment.

8. One watch carried by the owner and not exceeding in value $50.[42]

It has been proposed in Wisconsin to exempt personal property altogether, because a tax on it cannot be successfully administered, while it puts a premium on perjury and it is claimed increases the interest rate and drives capital out of the state. Ex-Governor La Follette has opposed this entire exemption of all personal property, believing that an adequate penalty vigorously enforced for delinquency in assessors, a searching examination of individuals and corporations, and public condemnation and legal punishment of every attempt to evade taxes will make the personal property tax a success. Apropos of the increase of the interest, if it is increased by the personal property tax, he argued that it would be unjust to compel every other tax-payer to pay an additional tax simply for the benefit of the few who borrow, most of whom borrow for the purpose of improving property, extending business operations, or carrying on every-day commercial transactions.[43] Such optimism is refreshing. The personal property tax, however, can have no chance whatever of success under a system of assessment by locally elected assessors. Experience everywhere has proved it. It is even doubtful if a system of inquisition under expert assessors amenable to civil service rules would effect the desired result. Perhaps it would be well to abolish that part of the personal property tax relating to intangibles and to raise the inheritance tax so as to supply the revenue lost by this abolition.*

[42] *Laws of 1891*, ch. 361; *Laws of 1893*, ch. 182; *Laws of 1903*, chs. 292, 246.

[43] *Governor's Message*, 1901, 18.

*Exemptions not noted in the body of this chapter are the following:

The real and personal property of public art galleries or of corporations organized without capital stock for the sole purpose of maintaining, regulating and managing a public art gallery, provided that the gallery is open to the public free of charge at least three days a week. *Laws of 1889*, ch. 319.

Real estate belonging to or held in trust for the State is exempt from special assessments. *Laws of 1901*, ch. 250.

Property of turner societies used for educational purposes is exempt from taxation. *Laws of 1883*, ch. 309.

Land used as a public park or monument ground and belonging to any military organization and not used for gain is exempt from taxation. *Laws of 1885*, ch. 376.

C. THE ADMINISTRATION OF THE GENERAL PROPERTY TAX: EQUALIZATION, EVASION, INEQUALITY, UNDERVALUATION, TAXATION OF CREDITS

The history of the administration of the general property tax in Wisconsin is a history from the very beginning of undervaluation, of evasion, and of inequality. There have been times of spasmodic reform, and at present the system is probably administered better than ever before, but the need of still greater reform and much of it is apparent.

The effect that the practice of undervaluing property has had on the interests of the state in keeping away settlers and deterring capital from finding investment in this state with its high rate of taxation cannot be determined, but it is certain that this practice coupled with local extravagance in government has had a very great effect of this kind.

The assessment law of 1849 trusted too much in the honesty of the taxpayer. Assessors were obliged to accept valuations of personal property that were sworn to by the owners or their agents or attorneys. Valuations of real estate sworn to by the owner and a disinterested freeholder of the same town or ward and of no relation to the owner were final. Trustees, guardians, executors or administrators might indicate by affidavit the personal property in their charge, and they might reduce valuations made by the assessor on real property held by them, by simply filing an affidavit with the assessor. The board of supervisors of each county was empowered to equalize the valuations in the several towns and wards, but they could not reduce the aggregate valuations made by the assessors. State taxes were to be apportioned among the counties according to the value of their taxable property as ascertained by the last returns from the several boards of supervisors. Unoccupied lands the owners of which were unknown were to be assessed without the insertion of the name of any person and were to be sold for unpaid taxes just as other lands.[44]

[44] *Act of 1849*, secs. 7, 85.

Complaints were made in every section of the state of inequality in the proportions of state taxation borne by the different counties and also of inequality as among individuals. Though these complaints were exaggerations in some cases they were far from being unfounded. The rapid change of land values made the problem of equal taxation more difficult in Wisconsin than in older states where values changed slowly. The notorious inadequacy of the laws for the perfection of tax titles, i. e. titles to land sold for taxes, allowed many property owners, mostly non-residents, to escape taxation for years. Consequently, in some counties the whole burden of taxation was thrown on less than one-half of the property holders. The practice of undervaluation* worked further inequality. The Constitution provided that the rule of taxation shall be uniform and the statutes that all property should be taxed at its full cash value, but in 1852 there was no county that complied with the statutes in this regard. A reform in the matter by fewer than all the counties would of course have worked injustice to the citizens of the counties making the reform. The valuations of property taken from the census returns for 1850 afford a means of determining the ratio of assessed to true value in each of the counties. These valuations were made by the census enumerators or by the owners. Over-valuations, in the opinion of the secretary of state, about balanced undervaluations. The following table exhibits the ratios for the several counties worked out on this basis:

Brown County paid taxes on 84 per cent of its real value.
Grant County paid taxes on 80 per cent.
St. Croix and Walworth each paid taxes on 76 per cent.
Columbia paid taxes on 75 per cent.
Fond du Lac, Rock and Richland paid taxes on 71 per cent.
Green paid taxes on 67 per cent.
Sauk and Adams each paid taxes on 65 per cent.

*In the case of the *Webster-Glover Lumber and Manufacturing Company vs. St. Croix County and others* the Supreme Court of the State held that valuation at "what it would have sold for right off, then and there,—a quick sale" to be in accord with the provisions that real property shall be valued at the full value that could ordinarily be obtained for it at private sale. *63 Wisconsin*, 647.

Jefferson and Dodge each paid taxes on 59 per cent.
Milwaukee paid taxes on 57 per cent.
Sheboygan and Washington each paid taxes on 50 per cent.
Racine paid taxes on 49 per cent.
Marquette paid taxes on 45 per cent.
Waukesha paid taxes on 42 per cent.
Dane paid taxes on 40 per cent.
Kenosha paid taxes on 34 per cent.

Brown County paid on twice as much of its real value as Waukesha and on more than twice as much as Dane or Kenosha. The apparent excess of taxation in Wisconsin over other states arose from the low standard at which property was assessed in the Badger State. As evidence that property was underassessed it may be pointed out that the assessed valuation for 1851 was $27,647,264; for 1852, only $27,017,502, while it is fair to assume from the increase of population, influx of capital, and improvements made that the value of taxable property had increased from ten to twenty per cent. It was urged in 1852 that not only the requirements of justice demanded reform, but that it was expedient to assess property at its full value in order that prospective settlers in the West might see that the Wisconsin tax rate was no higher than the rates in other states. The nominal rate in Wisconsin at that time was three and one-half mills; the real rate was but two mills. It was suggested that the State Board of Equalization might adjust the differences between true and assessed values by using statistics of land sales and of assessments to be reported by the register of deeds in each county, also statistics of acres tilled, amount of grain raised and its value, to be collected by the assessors. This plan was adopted many years later. The Secretary of State in 1852 recommended that property owners be compelled to swear to lists of their personal property. This plan was said to have been successful in several other states. In Ohio it had added seventy-five million to the personal property lists.[45] The legislature of 1852, however, took no effective action in regard to assessment and equalization, and the Board of Equalization pro-

[45] *Secretary of State's Report*, 1852, 12-18.

vided for in that year remained powerless and ineffective. This Board found it difficult to perform its duties because about half of the counties failed to make the returns required by law and some of the returns made were not in conformity with the law. The law by 1854 made provision for enforcing returns from town, village and city assessors. The members of the State Board of Equalization were the Governor, Secretary of State, Treasurer, Attorney-General, and Superintendent of Public Instruction. In 1854, the Lieutenant-Governor and the Bank Comptroller were added to the Board.[46]

Complaints of inequality continued to be made. Some interesting testimony was offered in the legislature in 1854 showing that in some cases real estate was taxed at a lower rate than moneys. A farm in Rock county paid a tax of $20, while one-fourth of the amount for which the farm was sold paid a tax of $59. Instances were cited in which $500 drawing interest at seven per cent paid as much as $2,000 worth of real estate renting for $200 a year. Undervaluations were complained of also. Milwaukee county was assessed at three millions; while Milwaukee City, within that county, was said to have been worth thirty millions. Such undervaluations discouraged real estate investments and affected adversely the bond sales of the City of Milwaukee.[47] In 1856 the Common Council of that city memorialized the State Board of Equalization. Assessment and valuation of property in the state for purposes of taxation it was declared had been and was, from custom and precedent, not more than one-fifth and often not more than one-tenth of the actual value, and consequently the rate of taxation for all purposes was so high as to deter immigration, prevent the investment of capital and affect seriously the best interests of the state. Besides, as the rate for city purposes was limited by law, low valuations often prevented the raising of a sum sufficient for necessary expenditures. It was recommended that the State Board after having equalized the assessments in the different counties should increase them five-fold.[48] Governor

[46] Ibid., 1854, pp. 43–44; *general laws*, 1852, ch. 498; 1854, ch. 73.
[47] *Milwaukee Sentinel*, Feb. 28, 1854.
[48] *Secretary of State's Report*, 1856, 100.

Bashford in 1857 characterized the mode of taxing property as defective, unequal, and unjust. A large proportion of the personal property of the state remained unassessed and real estate was taxed on the average at not over one-fourth of its actual cash value. The next year Governor Randall made the same complaint of the way in which the assessment laws were administered.[49]

A law enacted in 1858 sought to bring about reform in assessments of personalty by requiring sworn lists of property. This law was very explicit. It required every person of full age and sound mind, except married women, to list all the taxable property that he or she owned, also all moneys either in possession or on deposit and all credits except unliquidated credits in the form of book accounts. The property of wards was to be listed by their guardians; that of minors, by their fathers or mothers or persons in charge of their property; the property of a wife, by her husband, if he were of sound mind; property held in trust, by its trustee; the property of every firm, company or corporation, by the principal accounting officer, partner or agent. Lists were to be sworn to and a false oath was expressly declared to constitute perjury. Refusal to make out a list and swear to its correctness constituted a misdemeanor punishable by a fine of $10 to $50, recoverable by action for debt, to be begun by the assessor.[50] The property enumerated in the lists was the following:

1. Number of horses one year old (over two years, after 1860).
2. Number of neat cattle one year old (over two years, after 1860).
3. Number of mules and asses over one and one-half years old.
4. Number of sheep over six months old.
5. Number of hogs over six months old.

(June 1st of the year when the statement was made was taken as the reference point in determining the ages of animals; June 5th after 1864.)

6. Pleasure carriages of every kind.
7. Gold and silver watches.

[49] *Governor's Message*, 1857, 13-14; 1858, 26.
[50] *General laws*, 1858, ch. 115, secs. 1, 2, 12.

8. Piano-fortes and other musical instruments. (A law of 1860 reads piano-fortes and melodeons; in 1881 organs were added.)

9. All real property subject to taxation.

10. Goods and merchandise which a merchant was required to list.

11. Materials and manufactured articles required to be listed by manufacturers.

12. Moneys and credits required to be listed.

13. Farming utensils, mechanic's tools, law and medical books, surgical instruments and medicines.

14. Household furniture, beds, bedding, etc., not exempt from taxation.

15. Corn, hay, oats, rye, potatoes, fruits, wheat, wool, pork, bacon, and

16. All other articles of personal property required by the law to be listed.

Every act of neglect or of connivance upon the part of the assessor worked a forfeiture of from $200 to $1,000. A law of 1859 extended this penalty to apply to the secretary of state and the clerks of the county boards of supervisors. Personal property was to be valued by the assessor at the usual selling price at the time of listing, but if there was no selling price at the situs of the property it was to be valued at what it would probably bring. Money was to be listed at its full value, but depreciated bank notes at their current value. Annuities were to be listed at the value that the owner believed them to be worth in money. Unsold manufactured articles were to be valued at the value of the materials that had entered into them; sheep, without reference to the value of unshorn fleece. No person was required to list more of a credit than he believed to be collectable. A deduction of debts from credits was permitted. The Revised Statutes of 1858 declared that the principle of situs governed the taxation of all goods, wares and merchandise kept for sale in the state and of all materials, machinery and capital used for manufacturing.[51]

[51] *General laws*, 1858, ch. 115, secs. 1, 2, 3, 5, 6; *revised statutes*, 1858 ch. 18, sec. 11.

The next year with a view to improving the assessment of real estate an oath for the assessor was provided,* as follows:

"I———, assessor for the ——— district in the county of ——— do solemnly swear that the return to which this is attached contains a correct description of each parcel of real estate within said district, as far as I have been able to ascertain the same; and that the value attached to each parcel in said return is, I verily believe, the true value thereof." If he desired to do so the assessor was allowed to add "except as the same has been altered by the town (or city) board of equalization." In 1865 there was added to this oath the statement that the assessor had sought diligently to ascertain the true value of the property returned and that he had not knowingly omitted to demand of any person of whom he was required to demand a statement of the description, amount and value of the personal property that he was required to list for taxation, nor had in any way connived at any violation of the law in relation to the listing and valuing of property.[52]

The dissatisfaction with the work of the old State Board of Equalization led to the creation in 1858 of a new board made up of the Senate and the Secretary of State, which board it was said would be more representative than the old board. Ten years later, this board became a State Board of Assessment. Beginning with the year 1859 for a few years real property was listed, valued, returned and equalized every two years.[53] The assessment law of 1860 provided that in case of failure or refusal to list personal property or to swear to a list as required by law the assessor was to determine the value of the personal property in question through a hearing before a justice of the peace and that the clerk of the county board of supervisors might investi-

*The following was the oath required of persons listing personal property:

"I do solemnly swear that in the above statement I have truly set forth all personal property which by law I was required to list either on my own account or in behalf of others, according to the best of my knowledge and belief; and that in deducting the amount of my indebtedness I have included no other than bona-fide indebtedness accruing from actual consideration, and have not exceeded the amount thereof."

[52] *Laws of 1859*, ch. 167, sec. 24; *Laws of 1865*, ch. 538, sec. 43.

[53] *Laws of 1858*, ch. 115; *Laws of 1868*, ch. 130, sec. 4; *Laws of 1859*, ch. 167, sec. 52.

gate in the same manner if he thought a valuation returned to be too low. To the value ascertained by the assessor fifty per cent thereof was to be added. The new Board of Equalization and the new assessment laws gave good results. The increase in 1859 over 1858 in the valuation of property returned was $82,619,680; as equalized it was $98,702,213. This was an enormous increase as the total equalized value in 1859 was only $168,620,233.[54] The increase in personal property returned was from six millions in 1857* to twenty-five millions in 1858 but in 1859 there was a fall to thirteen millions, which the law of 1860 raised in that year to twenty-seven millions, which fell again to twenty-four millions in 1861 and 1862 and in 1863 rose to twenty-five millions.[55]

The laws continued to prove defective. The law of 1860 although it improved conditions considerably was open to much criticism. This law required the citizen to return a list of his property and to swear that the list was correct, but he might bid defiance to the authorities if his list was found to be false and false statements were by no means uncommon. Of course he was liable to prosecution for perjury, but that remedy was rarely if ever resorted to. It was suggested by the Secretary of State in 1865 that the evil might be mitigated by providing that the assessor, when he had reason to believe that a statement of property was incorrect, should add to the list what he thought should be added and should then notify the person who had made the statement to appear before the local board of equalization and show cause why such addition should not hold. If the assessor failed to do his duty with respect to such undervaluations, it should be incumbent upon the board of equalization to make the additions and notify the party. In other words, the Secretary recommended the adoption of what is known in taxation as the "doomage principle." The law of 1860 was defective in other respects also. It did not provide a means of collecting taxes from a tax payer who moved out of the county in which he owed taxes. In some cases persons

[54] *Governor's Message*, 1860, 6.

*1857 was, however, a panic year.

[55] *Secretary of State's Report*, 1860, 139.

living in the state took mortgages in the names of persons living outside of the state and thus escaped taxation on these securities. The provisons for the collection of taxes and the sale of lands for taxes worked great injustice. Lands on which taxes were not paid might be purchased by the county in which they were situated and after two years such lands were not taxable. Hence in many counties the amount of taxable property was greatly reduced. The amount of certificates of such lands held by counties, together with the enormous sums expended for the printing of delinquent lists and for advertising the sales imposed annually a great burden upon those who paid their taxes promptly. Persons who believed that they had cause to be aggrieved at any tax might enjoin its collection and pending the ensuing litigation the tax was paid by their neighbors. The Secretary of State said, "The prompt contributors to the public revenues who scorn to avail themselves of the insufficiency of the laws, who prize their homes equally with the protection the state affords to the enjoyment of them, are under the system now in force in this state compelled to toil not only for the portion of the revenue which the state can equitably demand of them, but also that which the state exacts by reason of the delinquency of others." It was recommended that the courts be prohibited from enjoining the collection of a tax and that it be provided that no technical error should invalidate a tax, also that every individual be compelled to pay his taxes, that municipal corporations levying illegal or fraudulent taxes be made liable for damages, that a charge of twenty-five per cent be entered against every piece of land delinquent in any year and if it should be delinquent for two years that it be offered for sale and if not sold for the amount of the taxes, interest and penalty that it should become forfeited to the state, also that counties be prohibited from buying lands sold for taxes. It was believed that such changes in the law would lighten the burden of which the prompt taxpayer justly complained.[56]

In connection with the law of 1860 it should be noted that the Supreme Court decided in 1865 in the case of *Matheson vs.*

[56] *Secretary of State's Report*, 1865. 82-83.

Town of Mazamanie that neither the assessor nor the town board of supervisors had power to increase the value of the non-enumerated articles of personal property returned and sworn to by the plaintiff.[57] In 1868 in the case of *White vs. City of Appleton* the Court held that a board of equalization had no power to increase the amount of a merchant's stock which the merchant had returned and sworn to.[58] In the case of *Ketchum vs. the Town of Mukwa,* tried in 1869, the Court decided that town and city boards in equalizing personal property had no power to increase the items returned by the taxpayer and that the authority of the assessor in the first instance, and of the clerk of the board of equalization in the second, to enter upon an examination of the amount and value of the property of any individual was expressly limited to those cases in which the individual either refused or neglected to make a list of his property or refused to swear that his list was correct. The absence of any clause in the law authorizing such examination or inquiry implied that the sworn list was to be final in so far as the amount of taxable property was concerned.[59] In the case of the *Town of Wauwatosa vs. Gunyon,* tried in 1870, it was held that the power of county boards of assessors to agree jointly on a value basis was confined to "enumerated articles," the values of which were fixed by the assessor.[60]

The tax system continued to be administered imperfectly and with difficulty. The property of the state had been steadily increasing in value, yet the assessed valuation in 1866 was twenty-two millions less than in 1860. In some districts assessors were elected and re-elected because they succeeded in listing property

[57] *20 Wisconsin,* 191.

[58] *22 Wisconsin,* 639.

[59] *24 Wisconsin,* 303.

This decision had reference to the law of 1865 which was for the most part merely a codification of previous laws. *Laws of 1865,* ch. 538.

This law of 1865 made a rather important addition in providing that if an assessor found any property real or personal that had not been assessed the preceding year he should assess it for that year as well as for the current year. A law of 1866 provided that the assessment for the preceding year should be at twice the value of the property. In 1878 it was provided that property not assessed for the next three years preceding or any one of them should be assessed. *Laws of 1865,* ch. 538, sec. 32; *Laws of 1866,* ch. 141; *Laws of 1878,* ch. 334, sec. 1.

[60] *25 Wisconsin,* 271.

a little lower than it was listed in neighboring towns or districts. It was recommended that some means of appointing rather than electing assessors be found. In speaking of equalization in 1866 the Secretary of State said, "Owing to the multitudinous army of officers having charge of the assessment of property many of their returns were defective in form as well as in figures and footings. The number of acres of land returned for 1865 as subject to assessment was found to be incorrect upon subsequent examination, hence equalization based on the returned average value per acre must necessarily be unequal and unjust."[61] Complaints were made constantly to the Secretary of State by assessors in all parts of the state. Some complained of being unable to construe the laws; others, of being unable to enforce them. The great difficulty seemed to be in securing a proper return of the amount and value of personal property. Assessors asserted that under the law obtaining a large amount of taxable personalty could not be reached. The Secretary, while admitting that there was some truth in these assertions, held that the assessors did not govern themselves by the plainest provisions of the law. He declared that the assessment returns of nine-tenths of the counties showed evidences of palpable violations where the law was perfectly plain. In support of this he showed that in one county the Board of Assessors, sworn to assess property at its full value, passed a resolution to assess all property at fifty per cent of its value. In another county the assessors agreed to assess bank stocks at par, personal property at forty cents on the dollar "and real estate in proportion." In another county it was the rule to assess horses at $30, cows at $8 and sheep at twenty cents. A few counties, Fond du Lac, Winnebago, Green Lake, Marquette and others, so far complied with the law as to be sustained by the State Board of Equalization. It was estimated that if all the counties had complied with the law as faithfully as did these few, the aggregate amount of property returned would have been doubled. The statements of personal property were too general. The inclusion of an indefinite number of items under one general heading allowed the concealment of a large amount of prop-

[61] *Secretary of State's Report*, 1866, 39, 43.

erty. It is interesting to note how many times the appointment of assessors instead of election has been recommended.[62]

In 1866 a law was passed requiring the Governor to appoint three commissioners to codify the laws relating to the assessment and collection of taxes and to recommend such changes as would secure greater uniformity and prevent frauds and evasions. These commissioners, known as the Tax Commissioners of 1867, were Stoddard Judd, George Gary and D. K. Tenney. Reference has already been made to the state of confusion in which these commissioners found the tax laws. In the administration of the tax system they found everything but uniformity. In one county swine were taxed at one cent a pound; in another, at eight cents. In hardly any two counties was there uniformity with respect to the assessment of personal property. The commissioners received no statistics from the counties of Milwaukee, Rock, Waukesha, La Crosse, Manitowoc and several others embracing the wealthiest and most populous portions of the state, in which portions it was believed that the execution of the law had been most lax. An examination of the assessment rolls of the county of Milwaukee disclosed that not more than one-seventh or one-tenth of the persons assessed for personal property had made out any list. The following table was prepared by the commissioners to show inequality in assessments.

Counties.	Horses.	Cows.	Oxen, per yoke.	Sheep.	Swine.	Pianos.
Brown	$15 to 100	$15 to 25	$25 to $60	$1-1½	$3-4	$50-300
Crawford	45-100	15	70	1	2	
Dodge	75	15	75	2	3 cts. a lb	125
Grant	75-100	10-30	17-125	3-5	4 cts. a lb.	50-400
Green	30-90	15	80	2	3 cts. a lb.	
Jefferson	25-150	15-20	75	2	2½ cts. a lb.	40-150
Kenosha	75	25	80	2	4 cts. a lb.	
LaFayette	30-100	12-25	25-60	1½	3 cts. a lb.	
Ozaukee	30-50	12	30-40	1½	2-3 cts. a lb.	25-100
Racine	75	20		2	8 cts. a lb.	150-200
Sheboygan	50	16	50	1-3	2 cts. a lb.	100-300
Sauk	15-80		60-80		2 cts. a lb.	100-300
Washington	50	12	69	1¼	$4 each.	200
Fond du Lac	25-250	8-30	40-110	3-15	3 cts. a lb.	20-250

However, as personal property does vary considerably in value the table does not show as much as could be desired. The

[62] *Secretary of State's Report*, 1867, 43.

statistics of the assessment of real property were more luminous and conclusive, e. g. in Green Lake county real estate was assessed at forty per cent of its cash value and personal property on a still lower basis; in Iowa county real estate was assessed at its full value, but in Walworth and Waupaca counties at but fifty per cent of its full value. Many citizens believed that the function of the town assessor was not to assess all property at its true value but to assess the property of his town no higher and even a little lower than property was assessed in other towns, in order that his town might avoid as much as possible of the state and county taxes. Consequently real property was assessed at extremely low values, varying in different localities from one-fourth to one-half of its real value. Personal property had necessarily to be undervalued also and such underassessment the commissioners averred led to the total nontaxation of a large part of the moneys and credits in the state and to a great undervaluation of merchandise. The commissioners insisted that undervaluation is inevitable and that real estate must in the end bear more than its just burden so long as property continued to be valued and assessed by elected assessors.[63]

In 1867 owing to the agitation of the matter there was a spasmodic reform. As a result of the efforts and the honest determination of the assessors in some counties, and of the efforts made by the department of state assisted by a few prominent citizens, the assessment returns for 1867 were more nearly satisfactory than they had been for several years. The valuation in 1867 was in round numbers 211 millions as against 162 millions in 1866. No doubt, however, the boom following the Civil War accounts for a part of this increase. Equalization reduced the 211 millions to 196 millions.[64]

As a result of the recommendations of the commissioners it was provided in 1868 that any officer refusing or neglecting to perform his duty or consenting to or conniving at any evasion of the tax laws was guilty of a misdemeanor and punishable by imprisonment in the county jail from one month to one year or

[63] *Report of Tax Commissioner*, 1867, 5, 6, 8.
[64] *Secretary of State's Report*, 1867, 39.

by a fine of from $25 to $500 or both. Furthermore, he was declared to be liable to civil action in double the amount of damages resulting to any town or person by reason of the assessor's refusal, neglect, or connivance. The same law prescribed that in determining the value, the actual selling value, of real estate the assessor should consider location, quality of soil, quantity and quality of standing timber, water privileges, mines, minerals, quarries, buildings, fixed machinery and improvements of every kind. This law changed the date of the assessment of personal property to May 1. It also—which is very important—increased the number of heads under which personal property was listed and provided that it should be valued by the assessor on actual view in so far as possible.[65]

The assessment figures for 1868 showed reasons for dissatisfaction with the work of the State Board of Assessment. The returned assessments for Ashland, Bayfield and Outagamie counties were from twenty-one to twenty-eight per cent higher than those fixed by the State Board. Those of Jefferson, Milwaukee, Ozaukee, Rock, Trempealeau, Walworth, Washington, Waukesha and Waushara counties varied from forty-four to seventy-one per cent higher. Marquette County was one hundred and twenty-one per cent higher. A board of not more than one-third the number of the board as then constituted would have done the work of assessment with more facility, accuracy, and impartiality. Secretary of State Thomas S. Allen wrote with reference to the Board, "Local feelings, interests and prejudices are strong in all minds, and great minds are not an exception." The work of the board was done by a committee having in some degree the fear that opposition would be raised in some quarter, resulting in the total defeat of their recommendations, if they insisted on strict justice. The inefficiency of the board was not, however, due wholly to its constitution. It was greatly hampered in its work by a lack of statistics showing the values of the counties and their progress in wealth. It was recommended that the board meet only once in three years and that prior to each meeting there be gathered statistics of population, of manufactures, of improved and unimproved lands, of the leading pro-

[65] *General Laws*, 1868, ch. 130, secs. 16, 20, 34.

ducts of the soil, of the forests and of the mines, of live-stock, of banks and corporations, also that the actual value of property be returned each year, the number and value of the different varieties of live stock assessed, the value of money, bonds, mortgages and other property admitting comparison, also the amount of county, town and other taxes levied each year. Such data it was thought would enable an intelligent board of a limited number of persons to arrive at an approximately correct conclusion as to the actual and relative values of the property of the state. The experience of the year 1868 confirmed the belief that increasing the heads under which personal property is listed conduces to a larger return. The counties that used the improved blank in 1868 showed the largest increases of personal property.[66]

The next year it was enacted that assessors should gather statistics of the number and value of live stock, vehicles, gold and silver watches, pianos and melodeons, merchants' and manufacturers' stock, bank stocks and all other personal property.[67] A bill requiring returns of the amounts of county, town, and other taxes was lost. This statistics law proved to be a wise piece of legislation. It afforded the first approximate estimate of the actual value of the various kinds of property subject to taxation. The total value returned for 1869 was more than double that of any preceding year and was

Personal property	$82,737,142
Lands	167,912,359
City and village lots	176,977,855
Total	$427,627,356

Green Lake and Ashland counties are not included in the above figures. Their valuation was eight or nine millions. The personal property returns for 1869 showed that the listing was still too narrow, as nearly thirty-one millions were returned as "other personal property."[68]

The reform of 1869 proved, however, to be in part at least,

[66] *Secretary of State's Report*, 1868, 36-39.
[67] *Laws of 1869*, ch. 106.
[68] *Secretary of State's Report*, 1869, 23.

only another spasmodic one; all of the ground gained in 1869 was not lost in 1870, but the aggregate valuation fell off by $1,800,000. Horses were valued at fourteen as against sixteen millions in 1869; cattle and mules showed a smaller decrease; vehicles declined twelve per cent. There was a marked decline in all kinds of personal property.[69] Undoubtedly a part of of this was due to depreciation in particular cases, but the aggregate decline could hardly be accounted for in this way. In 1871 the total assessed valuation fell to $329,503,603, a fall of almost one hundred millions in two years. The returns for that year showed a greater uniformity between the counties as to different kinds of property, but the legal basis of true cash value was far from being adhered to. Assessors uniformly under-assessed all kinds of property believing, that in so doing they lessened their towns' burden of state and county taxes. The adjustments made by the State Board of Assessment and Equalization remedied the evil in some measure, but there were required more stringent laws regulating the duties of assessors, and providing for a more nearly thorough enumeration and classification of property in order that the boards of equalization might more fully correct erroneous assessments made by town officers.[70]

In 1872 an attempt was made to improve the administration of the personal property tax. A law of that year provided that merchants' goods, wares, commodities kept for sale, tools and machinery, manufacturers' stock, farm implements, live stock, and farm products should in all cases be taxed at their situs. Other personal property owned by non-residents who have no agent in the state is to be taxed at its situs. If there is an agent the tax is levied where he is located. A law of 1882 declares specifically that saw logs, railroad ties or telegraph poles cut in the state and owned by non-residents having no agent in the state shall be taxed where they are piled up for shipment.[71]

Two important laws were enacted in 1873. In order that the state taxes might be equalized more fully it was enacted that

[69] Ibid., 1870, 21.
[70] *Secretary of State's Report*, 1871, 113; Ibid., 1872, 7.
[71] *Laws of 1872*, ch. 148; *Laws of 1882*, ch. 258.

the registers of deeds in the several counties should furnish the Secretary of State with the following information respecting all real estate transferred in their respective counties:

1. Date of transfer.
2. A brief description of the land sold and the quantity thereof.
3. The consideration stated in the deed.
4. The assessed value of the property, as shown by the last assessment roll.

The purpose of this law is to afford a means of determining the approximate ratio between real and assessed value and thence the approximate real value of all taxable real property. A simple illustration will make the plan clear. Suppose that in a certain county in a certain year the aggregate sales of real property amounted to two million dollars and that the assessments of the property sold amounted to one million dollars. Then the ratio of true to assessed value in that county for that year might be assumed to be approximately two to one. Consequently if the property in the county was returned at ten million dollars, the real value would approximate twenty millions. Errors upon the part of registers, both intentional and unintentional, and fictitious and nominal *considerations* in deeds have to some extent marred the carrying out of this plan of determining true value in Wisconsin, but nevertheless the plan has served very well. The other law of 1873 made the Secretary of State, the State Treasurer, and the Attorney-General the State Board of Assessors.[72]

The average price for which lands were sold in 1872 as shown by the returns of the registers of deeds was $11.18 an acre; the assessed value of the same land was only $6.06 or 54 per cent: the sale price of city and village lots was $551.11 on the average; the assessment of the same was $353.31 or 64 per cent. The great underassessment was due in great part no doubt, as in previous years, to the belief that if the aggregate assessment of a city or town was small, the proportion of the state and county tax paid by such city or town would be correspondingly small. This idea, however, had no foundation in fact after the State

[72] *General Laws*, 1873, chs. 210, 235.

Board of Equalization had become a State Board of Assessment, whose duty it was to make assessments irrespective of the city or town valuations and based on statistics of population and wealth furnished by the Secretary of State. The city and town assessments were valuable more for determining the number of articles of each class of assessable property and not so much their valuation. If the State Board found that the state average for any kind of property was too low, the board raised it to what they thought it ought to be and consequently every county, town and city was taxed a certain amount without regard to their returned valuations. County apportionments and assessments were made in the same way, so that local under-valuations effected little, if anything, and by raising the tax rate drove capital away from the state, thus crippling its industries and retarding its growth.[73]

In 1874 the average value of lands sold was $14.56; their assessed value was $7.38 or less than 51 per cent. City and village lots sold for $656.16 and were assessed at $383.22 or 58 per cent.* In all the counties but one assessed value was below real value; in that one, Bayfield county, the average sale price of lands per acre was $2.53; the average assessed value was $3.48. Not only was property under-assessed, but as ever before and since much personal property escaped altogether. Considerable difficulty was experienced in collecting taxes on saw logs, which were in a town at assessment time but were subsequently removed.[74]

In 1875 lands sold for $15.60 and were assessed at $6.51 or less than 42 per cent. City and village lots sold for $731.49 and were assessed at $354.89 or 48½ per cent. The returned valuation of personal property was almost four millions less than in 1874; that of city and village lots, more than four millions less; that of lands more than three millions less, yet property had undoubtedly increased in value. The next year, however, there was a decided increase in the assessed values of each kind of property, yet under-valuation continued to be the rule. Lands

[73] *Secretary of State's Report*, 1873, 22-23.

*In each year the selling prices for that year are compared with the assessments for the year preceding.

[74] Ibid, 1874, 32, 34.

were assessed at 46 per cent of their value; city and village lots, at 53½ per cent. In the opinion of the Secretary of State the law seemed to give the assessors all the power necessary to secure a full and complete assessment of property; but such an assessment seemed possible only under "a favorable combination of circumstances." The evils in the tax system seemed to lie not so much in the imperfections in the law as in the difficulty and even impossibility of securing a full compliance with the law.[75] In 1877 the Secretary of State expressed the opinion that the law in theory was as complete as could be expected and that the difficulty lay wholly in its execution. He recommended that any additional legislation be confined to an effort to secure reasonably strict compliance with the provisions of the law then in force. The observation apropos of this matter of the Governor in 1878 is well worthy of notice. He said that the prevailing tendency in Wisconsin legislation to require so many returns and reports under oath had tended to beget a disregard for the solemnity of an oath.[76] In 1877 lands sold for $14.53 and were assessed at $6.77; lots sold for $557.94 and were assessed at $300.31. Personal property and lots declined in assessed value; lands increased somewhat.[77]

In passing, we may notice a law of 1877 relating to the assessment of iron ore lands. In assessing such lands the assessor is required to add to the value of the land itself the net value of the iron mined in the preceding year. The gross product, its value, and the cost of mining it, the person, real or legal, who owns or leases the land is obliged to furnish to the assessor. If the owner and the exploiter are different persons both are obliged to report to the assessing officer. If the report is not rendered in the time provided for by law the assessor is to fix upon such a value as he thinks is correct, but in such cases he is not to deduct the cost of mining. The assessor is empowered in any case to seek any and all information that will enable him to put a true value on the property.[78] Assessors are to

[75] Ibid., 1875, 35-36; ibid., 1876, 29.
[76] Ibid., 1877, 31; *governor's message*, 1878, 6.
[77] *Secretary of State's Report*, 1877, 29.
[78] *Laws of 1877*, ch. 269.

value all property from actual view if possible, but the fact that the extent and value of minerals or other valuable deposits in any parcel of land cannot be ascertained shall not deter the assessor from putting upon such parcel the value that could be ordinarily obtained for it at private sale.*

In 1878 another wave of reform swept over the state. Without doubt this was due to the decision of the Supreme Court in the case of *Schettler vs. The City of Fort Howard.* The Court declared in this case that under-assessments or assessments at arbitrary values invalidated the whole tax.[79] The State Board was of the opinion that the abstracts of the assessment rolls for 1878 showed that the local taxing officers had in general tried honestly and faithfully to govern themselves by the express provisions of the laws, which directed that all taxable property should be assessed at "the full value which could ordinarily be obtained therefor at private sale." The abstracts showed an increase of $103,560,228 over the preceding year. In order that no county should bear an inequitable share of the state tax in consequence of "its assessors having had conscience as well as judgment awakened," the Board distributed the increase among the counties. The next year, however, the aggregate valuation fell off forty-nine millions. The board raised it about thirty-nine millions, as the decline was evidently due to remissness on the part of the assessors.[80]

A new penalty law relating to the return of property for taxation was enacted in 1889. It provides that any person, firm, or corporation owning or holding personal property of any kind subject to taxation, who or which shall intentionally make a false statement to the assessor of his or its district or to the board of review for the purpose of avoiding the payment of just and proportionate taxes on such property shall upon conviction forfeit $10 for every $100 or major fraction of the property withheld from the knowledge of the taxing authorities. It is the duty of every district attorney to investigate upon complaint of any tax payer of an assessment district, and

* *Laws of 1907.*

[79] *43 Wisconsin,* 48.

Other cases in point are to be found in, *25 Wis.,* 490; *29 Wis.,* 51; *37 Wis.,* 75; *42 Wis.,* 502; *43 Wis.,* 55; *49 Wis.,* 645; *54 Wis.,* 580; *65 Wis.,* 298.

[80] *Secretary of State's Report,* 1879, 30.

if he finds the complaint well-founded to bring action to recover the forfeit. This law provides also that assessors shall be punished by a fine of from $100 to $300 for accepting a statement as to moneys, notes, bonds, mortgages, or other securities and evidences of credit without requiring an oath as to the correctness of the statement. A law of 1901 provides that an assessor or member of a board of review guilty of dishonesty in the discharge of his duties shall be dismissed from office in addition to being fined. Another law of 1901 provides that any assessor who asks for, solicits, or receives any reward from a property owner for under-valuing his property is to be punished by imprisonment for not exceeding six months or by a fine of not exceeding $500. Any member of a board of review who under-values or agrees with another member to an undervaluation or omission from the assessment roll of any property, or who intentionally in any way fails to do his full duty is to forfeit not less than $50 nor more than $250. In addition to the above penalties any assessor or member of a board of review guilty of misconduct in the discharge of his duties is civilly liable for any loss to any one because of such misconduct. The penalty touching the assessor applies also to persons who solicit the trade of any property owner by promising him a lower assessment on his property, also to persons who attempt to bribe an assessor.[81] Notwithstanding these laws in at least one city of the state low assessments are exchanged for fire insurance patronage.

The Supreme Court in 1889 in the case of *The State ex rel. Smith vs. Gaylord* reached the very important decision that boards of review have the power upon evidence to raise sworn valuations of personal property. In the same year the Court decided that moneys, bonds, and mortgages are taxable to a Wisconsinian at his situs even if the property is in another state. In this case Dwinnell admitted that he had $14,000 in moneys and securities in the hands of an agent in Nebraska, but contested the right of the board of review to add such sum to his sworn list. The Court upheld the board.[82]

[81] *Laws of 1889*, ch. 381; *Laws of 1901*, chs. 330, 379.
[82] *73 Wisconsin*, 306, 316.

A law of 1889 prescribed the following statement of assessed valuation from town, city and village clerks.[83]

Description of property.	Aggregate amount.	Aggregate amount.
1. Horses of all ages		
2. Neat cattle of all ages		
3. Mules and asses of all ages		
4. Sheep and lambs		
5. Swine		
6. Wagons, carriages and sleighs		
7. Gold and silver watches		
8. Pianos, organs and melodeons		
9. Value of bank stock		
10. Value of merchants' and manufacturers' stock		
11. Amount of moneys, accounts, bonds, credits, notes and mortgages		
12. Value of all other personal property		
13. Total value of personal property		
14. Number of acres of land and value thereof		
15. Aggregate value of city and village lots		
16. Total value of real estate		

The list required by a law of 1897 is somewhat different. It reads as follows:

1. The number and value of all horses, neat cattle, mules, asses, sheep, lambs, and swine of all ages.
2. The number and value of wagons, carriages, and sleighs.
3. The number and value of gold and silver watches.
4. The number and value of pianos, organs, and melodeons.
5. The value of bank stock.
6. Amount of moneys, accounts, bonds, credits, notes, and mortgages.
7. The value of leaf tobacco.
8. The value of logs, timber, lumber, ties, posts and poles, not being manufacturer's stock.
9. Number and value of steam and other vessels.
10. The value of real and personal property and franchises of water and light companies.
11. Number and value of all bicycles.
12. The value of all other property not exempt.[84]

[83] *Laws of 1889*, ch. 479.

[84] *Laws of 1897*, ch. 380, sec. 1050.

A law of 1897 provided for the appointment by the Governor of a tax commission of three members to serve for one year and without compensation. The commission was to be appointed to gather statistics, make investigations, and recommendations. The persons appointed were Burr W. Jones, K. K. Kennan, and George Curtis, Jr. Their report, which appeared in 1898, is an excellent piece of work and contains a very good bibliography of writings on the subject of taxation. The commission found that different kinds of property were omitted from assessment in different counties according to custom. Eighteen counties returned no grain or farm products. In twenty-three counties no household furniture above the value of $200 was found, although some of the smaller and poorer counties returned large amounts. Fourteen counties reported no money in possession or on deposit, although in some of these counties bank reports showed deposits. No notes, bonds, or mortgages were returned by twenty-one counties. From the best information obtainable it seems probable that personal property in Wisconsin fully equals in value the real estate, yet in 1897 the assessed value of personalty was only seventeen per cent of the total assessed valuation and it had been decreasing proportionally for years. The commissioners very wisely recommended a system of comity between the counties as a means of overcoming the evil of tax evasion.[85] The phases of inequality noted by the commissioners are important. They dwelt in particular upon the discrimination against the farmer, who seldom has anything that can be concealed from the assessor, and nearly all of whose property is taxed. In not a few instances farmers whose incomes do not exceed $600 a year pay $75 to $100 annually in taxes, while a great number of business and professional men having incomes of over $6,000 pay little if any taxes. According to the State Census of 1895 and the assessments of that year 70 per cent of the domestic animals in the state, mostly the property of farmers, were assessed, and assessed at nearly 60 per cent of the true value of all the animals in the state. Those assessed were on the average assessed at 84 per cent of their value. Note how this compares with the assessment of bank

[85] *Report of Tax Commission*, 1898, 74.

deposits. The reports of the comptroller of the currency and of the state bank examiner show that on a given day in 1896 there was on deposit in Wisconsin banks $55,754,137.95. Taxes are supposed to be paid on the average amount of moneys in possession or on deposit during the year. The total assessed value of money in possession and on deposit in 1896 was $3,032,-103, exclusive of valuation for the city of Milwaukee, the assessed value of whose moneys, notes, bonds, mortgages, etc., was only $2,266,885. Disregarding Milwaukee the assessed valuation was a little over 5 per cent of the amount reported by the comptroller, and counting and including all of Milwaukee's $2,266,855 as money the assessed valuation was only a little over 9 per cent.[86] Of course the writer admits that the amount reported by the comptroller may have been higher than the average amount for the year, but under the most liberal construction this property could not have been assessed at more than 20 per cent.

Underassessment leads to inequality even in the same assessment district, because comparisons with former assessments or with an arbitrary standard and of one piece of property with another soon lead the assessor into a labyrinth of confusions. Besides, the absence of a definite standard begets indifference and carelessness in honest officials, opens the way to dishonesty, and gives room for the play of bias and prejudice. In some districts, particular interests and certain classes are favored. The Commission of 1897 found a just and intelligent administration of the tax laws in some localities, but in the majority of places the assessment had become little more than a farce. County assessments had become a disgraceful struggle between the members of county boards, each member trying to promote the interests of his district at the expense of the others. Underassessment makes redress difficult in the cases of aggrieved individuals, because before the board of supervisors or in court such an individual must show that his property is over-assessed in relation to other properties. From the point of view of the law he has not in many cases been over-assessed but under-

[86] *Report of Tax Commission*, 1898, 72, 73.

assessed, although in comparison with his neighbors he may have been over-assessed. "He must make a virtual re-assessment of the district by testimony produced before the board or court." In court a mass of conflicting values confuses the judge, who, disposed to uphold all measures for the collection of revenue, is unable to find that the assessor *intentionally* over-assessed the plaintiff. If the court orders a new assessment the same farce is played over again.[87]

In Wisconsin in the twenty years from 1877 to 1897 the assessed value of real estate increased about 89½ per cent; of personal property, only 40½ per cent. This record is indeed poor, but in comparison with California's record it is good, and Professor Plehn thinks that California's general property tax conforms very closely to the ideal general property tax. Professor Plehn says, "If it is possible to administer any general property tax fairly this one could be so administered. If it is possible under any law to discover all the property owned by the citizen, it ought certainly to be possible under this law." However, in California from 1880 to 1896, the assessed value of real estate increased 125 per cent; of personal property, only about 8 per cent.[88] Taking the country as a whole, Wisconsin's record is poor. The United States census estimate of the true value of taxable property in Wisconsin in 1890 was $1,500,000,000; the total assessed value was $579,839,542; the difference, $920,160,458.*

According to the eleventh census the average percentage of assessed to true valuation in the United States as a whole was 39.29 per cent; Wisconsin's percentage was 31.48 per cent. If Wisconsin had simply reached the general average its total

[87] *Report of Tax Commission*, 1898, 78, 81, 82.
[88] Ibid., 117.
* State Assessment.

1903.	Real Estate	1,309,504,464
	Personal Property	443,667,536
	Total	1,753,172,000
1904.	Real Estate	1,422,621,485
	Personal Property	420,219,515
	Total,	1,842,841,000

assessed valuation would have been greater by more than $100,000,000.†

If all the property in Wisconsin had been assessed at one-third of its value there would not have been so much cause for complaint, but investigation showed that some classes of property escaped almost entirely, while others were assessed at their full value and frequently beyond. That condition obtains today nor is the discrimination wholly between classes of property; it holds between persons owning the same kind of property. Now, as in 1897, the possessions of the poor man are few and tangible; those of the rich man are in great part, bonds, stocks and mortgages, which for the most part escape taxation.[89]

The Tax Commission of 1897 said of the Wisconsin system, "No intelligent man can become familiar with the methods of raising taxes now in vogue in Wisconsin without being impressed by the fact that they are defective in many particulars and fall far short of what the intelligent and progressive people of this state have a right to demand."[90]

Provision was made in 1899 for the appointment of a tax commissioner, and a first and a second assistant. Their tenure of office was to be ten years and they were to receive $5,000, $4,000 and $4,000 a year respectively. The Governor appointed Norman S. Gilson, George Curtis, Jr., and Nils P. Haugen. The law provided that the expenditures of the tax office for clerks, etc., was not to exceed $10,000 a year.[91] The Commission has published two very excellent reports, one in 1901 and the other in 1903. A law of 1905 made all the commissioners of equal rank* and made the commission permanent.

†The following percentages, for 1890, of assessed to true value are of interest:

Michigan	42.87
New Jersey	61.75
Maine	63.20
Massachusetts	76.83
New Hampshire	80.91

In 1890, real property in Wisconsin was assessed at 45.4 per cent of its real value and personal property, at 15.83 per cent. *Governor's message*, 1901, 13. 1900—Wisconsin property assessed at 37 per cent of true value. *Twelfth Census.*

[89] *Report of Tax Commission*, 1898, 71, 72.

[90] Ibid., 69.

[91] *Laws of 1899*, chs. 206, 322.

* Since this was written the commission has issued its 1907 report, contain-

In 1899 assessments varied in the different counties from 19 per cent to 91 per cent of real value, estimated by returns of land sales by registers of deeds. There was a lack of uniformity among districts in the same county, but some measure of uniformity generally characterized assessments in the same town or district through a period of years. Letters sent out to manufacturers by the tax commission in 1900 brought disappointing results. To 385 letters sent only 186 replies were received. This fact and the fact that the assessment in 1900 was higher than in former years probably make the result of this inquiry of little significance. The figures indicate that manufacturies are taxed on 37.2 per cent of their value. To merchants 4,300 letters were sent; only 1,339 satisfactory replies were received. The ratio indicated by these replies is 45.5 per cent. The returns from banks represented 90 per cent of the banking capital in the state and indicated that banks were taxed on 77.7 per cent of their paid up capital, 63.1 per cent of the value of stocks and surplus, and 58 per cent of paid up capital, surpluses, and undivided profits.[92]

The commissioners ascribed the practice of tax dodging to three causes; first, human selfishness; second, the belief entertained by many that the taxation of moneys, credits, and securities is unjust; third, the knowledge that many others withhold their property from taxation. The commissioners in their 1901 report make some very important observations apropos of evasion. The practice of evasion has become so general and so long continued that it has come to be relied upon as a legal rule of property. Business obligations are incurred, investments and values are made and adjusted with reference to this rule. This fact is one exerting great influence against any effort to secure direct taxation of intangible property, and there are grave questions of public policy involved in any changes that would operate to materially change such condition. This leads us to a discussion of the taxation of credits. Legislation cannot change human nature. Experience in the older states

ing among other valuable items an interesting and important contribution on mortgage taxation, by Professor Thomas S. Adams.

[92] *Report of Wisconsin Tax Commission*, 1901, 71.

shows that no means of reaching intangible personalty can be devised. Even the stringent inquisitorial law of Ohio was a failure. As public opinion, however, seems to favor the taxation of or rather the attempt to tax such property, the commission recommended that compulsory swearing to lists be abolished and that assessors and boards of review be empowered to assess by estimate property that they thought was escaping, and that as a protection to the tax-payer it be provided that he have ample opportunity to be heard before the board. When assessors were urged by the commission to avail themselves of the slight doomage power in the old law, gratifying results had followed. Penalties affecting both assessor and tax payer were recommended also.[93]

Apropos of the taxation of credits, the opinion of Governor Dewey of over a half century ago is interesting. The tax law of 1849 subjected credits to taxation with the evident purpose of compelling the lender and the speculator to assist in the support of the government, but in the opinion of the Governor the law did not accomplish its end but rather imposed in most cases, an additional burden on the borrower and the debtor, as the tax was added to the interest rate. The Governor maintained that the taxation of credits produced double taxation. A farm sold on credit for example was taxed twice. Property and not its phantom was declared to be the proper subject of taxation[94] There can be no doubt that double mortgage taxation is unjust, but whether a tax on credits is shifted to the borrower in the form of a higher interest rate is a problem as yet unsolved.

As we might suspect, information gathered in 1897 from well-informed citizens, from assessors and other officers of experience in administering the tax laws indicated that only a very small proportion of mortgages were taxed in Wisconsin. Up to 1903 the mortgage was taxable as personal property and the real property mortgaged was taxable regardless of the mortgage. Publicity of record did not render concealment or evasion impracticable. The commonest method of evasion was to have the mortgage drawn in favor of some person living outside of

[93] *Report of Tax Commission*, 1901, 138-139, 144-148.
[94] *Governor's Message*, 1850.

the state or in a county other than the one in which the mortgage was recorded. The nominal mortgagee usually conferred the power of attorney on the real mortgagee or his agent, which power authorized the collection and satisfaction of the mortgage. Sometimes the mortgage was assigned at once to the actual mortgagee or his agent and the assignment was withheld from public record until the mortgage was satisfied. It was estimated that in Milwaukee county, which contains the only large city in the state, 90 per cent of the mortgages put on record were recorded in the names of non-residents. In localities where assessors were not in the habit of examining the mortgage records this method was not employed to any extent.[95]

Owing to diligent efforts upon the part of the supervisors and assessors and in part perhaps to the fact that a lower rate of taxation resulting from a fuller valuation induced many persons to list credits theretofore concealed, there was in the years 1899 to 1902 a marked increase in the amount of credits taxed; the amount in 1902 was more than double the amount in 1901.* This increase is, however, no evidence that credits can be reached if assessors will only make the effort. In many parts of the state prior to 1902 little effort had been made to tax credits, consequently holders were accustomed to make little endeavor at concealment and so in 1902 they were taken unawares. Public records had not in general been investigated by taxing officers and hence in many localities mortgages were recorded with no attempt to conceal the name or residence of the mortgagee. The amount of credits reached in 1902 is believed to have been a very large part of the total amount of credits taxable, and the method of increasing the credits, by examination of public records indicates that the increase was made up almost wholly of recorded mortgages on real estate.[96]

The seeming great progress of 1902 in the taxing of credits when looked at carefully is seen to be really no great progress at all. The difficulty of listing credits to any great extent continues to be insurmountable.

[95] *Report of Tax Commission*, 1898, 111.

* 1901, $35,598,181; 1902, 73,055,102. Moneys are included in these figures, but they are so small an amount as to be negligible.

[96] *Report of Tax Commission*, 1903, 106.

A majority of the tax commissioners recommend the exemption of credits, upon grounds so often advanced by economists, namely, that the direct taxation of credits as property without a corresponding reduction in the assessment of the property of the debtor works double taxation, producing inequality and injustice, in so far as the tax can be collected; that such taxes are capable of only partial enforcement;that such non-enforcibility works great injustice to those reached by the law, whether the creditor pays the tax or it is shifted to the debtor; that the deceptions resorted to in order to evade the tax have a degrading moral effect upon the community. Judge Gilson and Mr. Curtis, two of the commissioners, condemn taxation of credits with a deduction from the property of the debtor, because, in their opinion, the tax is shifted, along with a commission for risk, to the debtor in the form of a higher interest rate or otherwise, and laws designed to prevent such shifting are impracticable and serve to injure rather than benefit the debtor in whose behalf they are enacted.[97] The argument of the commissioners that a credit is not property and that its taxation therefore works injustice between debtors and non-debtors and also between creditors and debtors who pay the tax and those who do not is exceedingly well put.[98] It is argued that the tax on a credit will be shifted to the debtor, because if the interest rate is not high enough to yield a reasonable income over and above the tax, loanable capital will seek investment in enterprises until the amount of loanable capital is so reduced as to yield as compared with investments in industries a fair income plus the tax. Besides, it is contended, the debtor pays something in the case of loans running over a year or two to insure the creditor against loss in case the tax should be raised. The opinion of the California Supreme Court given in the case of *Hewitt vs. Dean* (91 Cal. 5–12) may be cited in this connection. The Court said, "All experience has shown that the rate of interest is governed by the inflexible laws of trade, and is regulated by the same law of supply and demand as that which governs all other articles of commerce, and that legislatures and

[97] Ibid., 115.
[98] Ibid., 15–19.

constitutional conventions are powerless in their attempts to change this law, that whenever the state imposes a tax upon a commodity the burden of that tax is borne by him whose necessities require him to purchase and not by him who holds it for sale."

The commissioners admit that a tax cannot be shifted to any extent if levied on only a small body of creditors, but maintain that such a condition is exceptional and if the tax is considerable it places a heavy and unjust burden upon those who cannot transfer their capital from the taxed to the untaxed field.[99]

The commission is unable to cite Wisconsin statistics showing that a tax on credits is added to the interest rate. In some localities in which the law taxing credits had been most vigorously enforced in 1902, much greater difficulty than theretofore was experienced in obtaining mortgage loans, and interest rates advanced very materially. In some other localities, however, no marked change was discernible. A mass of Wisconsin mortgage statistics now awaiting interpretation will perhaps throw some light upon the question. In supporting their contention as to shifting, the majority of the commission placed chief reliance upon the conclusion of Professor Plehn of California, set forth in the *Yale Review* for May, 1899, which conclusion is, however, illogical. Professor Plehn compares the interest rates on first class mortgages with those on first class commercial paper in the city of San Francisco between January 1, 1880, the time when the constitution was changed so as to tax mortgages as an interest in the property mortgaged, and October 1, 1898. The average rate on mortgages, subject to taxation, was 6.81 per cent; on first class commercial paper, practically untaxed, 4.73 per cent. The average rate of taxation was 1.7 per cent. The excess of the difference between the two rates over the tax Professor Plehn says is the cost of shifting.[100] Such a comparison cannot, however, be trustworthy, because there are vast differences between mortgages, which are long time loans, and commercial paper, which represents short time loans. Probably the tax is shifted, but proof of it is still lacking. On the other hand,

[99] *Report of Tax Commission*, 1903, 121-123.
[100] *Report of Tax Commission*, 1903, 127-130.

conditions in the national money market may determine interest rates and the tax may have no influence upon them. The problem is still unsolved, nor is it easy of solution, because of the myriad of factors involved.

The argument is advanced by the commissioners that even if shifting could be prevented a tax on credits would, through a diminution of loanable capital, make credits dear and thus injure the enterprising farmer who is improving his property or seeking to enlarge his farm by purchasing more land, which he could cultivate profitably, also the enterprising merchant or manufacturer, and the would-be builder of a cottage home. Such people are benefited by cheap credits, which if easily obtainable promote industry, increase production, obviate the necessity of forced sales, and so keep up prices. It is contended that a tax on credits has social disutility because it makes credits dear.[101]

A further objection to the taxation of credits is said to arise from the fact that credits held by banks, trust companies, life and fire insurance companies and various other companies are taxed indirectly by special methods, which compel them to pay less than if they were taxed directly. Besides, the credits, except mortgages, of non-residents, are exempt. In order to tax all credits alike it would be necessary to revise the methods of taxing the corporations named above and this could not be done in the case of national banks, since Congress has permitted only one way of taxing these institutions.[102] Besides bank deposits can be reached only through bank officers, if they are not reported by the depositors, and if bankers gave this information they would violate the confidence of their customers. Furthermore, an investigation made by the commission in 1901 showed that in districts where banks are located the tax rate equals or exceeds the interest paid on deposits that draw interest. Deposits subject to cheque usually draw no interest at all. Hence if the law with respect to the taxation of bank credits were enforced, deposits would be withdrawn and hidden or sent to banks in other states. Wisconsin banks would be destroyed and the business interests of the state would suffer severely.[103]

[101] *Report of Tax Commission*, 1903, 135.
[102] Ibid., 137-138.
[103] *Report of Wisconsin Tax Commission*, 1903, 135.

In conclusion the majority of the commissioners said, "The credit tax is not a tax on property, but a mere fiction specially enacted for that purpose. In its relation to the general property system it has no logical connection; it is an excrescence, a monstrosity, having no basis in economic truth or in substantial justice, working only wrong and injury to individuals and disadvantages to the people as a whole."[104]

Mr. Haugen, the other commissioner, dissented and his speech before the assembly committee on taxation killed the "credit exemption bill," which passed the senate in 1903.[105] Mr. Haugen showed that the bill would take off the assessment rolls $73,000,000 directly and since if other credits were exempt the United States Statutes and the Wisconsin rule of uniformity would forbid the taxation of banks,* and consequently over $100,000,000 would be subtracted from the tax rolls; hence at a tax rate of 1.3 per cent about $1,300,000 would be added to the taxes of people whose property is not in the form of credits. He argued that the bill would exempt a favored class from all public burdens. The bill, he affirmed, was inconsistent, since it did not propose to exempt moneys. As credits are taxable at the situs of the owner, capital outside of the state will compete with that in the state and thus the interest rate will be kept from rising. Mr. Haugen is wrong in his contention that the rule of uniformity would forbid taxation of banks in case credits should be exempted, hence the $1,300,000 above is probably too high, about $200,000 too high. Mr. Haugen is confident that the tax on credits can be administered with reasonable success, and perhaps with assessors independent of the people whom they assess and whose tenure of office is dependent upon a faithful and thorough discharge of their duties such an administration might

[104] Ibid. 140.

[105] This was Senate Bill 342, 1903. Mr. Haugen's argument is published in pamphlet form. Haugen, Nils P., *The Exemption of Credits*, (Madison, 1903).

* In 1881, in the case of *Ruggles vs. City of Fond du Lac* the Supreme Court of the State held bank stock to be a credit from the point of view of the stockholder. Hence from such stock a payee might subtract bona-fide debts. Any other construction it was held would invalidate the tax on national banks, since it would work a discrimination against moneyed capital in the form of national bank stock, which discrimination is forbidden by the United States Law permitting state taxation of national banks. *53 Wis.*, 436.

See also *113 U. S.*, 689, and *166 U. S.*, 440 (cited by Mr. Haugen).

be possible, but in the opinion of the writer it is extremely doubtful. If the proposed constitutional amendment to permit taxation of incomes, privileges, and occupations is endorsed by the legislature of 1907 and receives the sanction of the people Wisconsin may substitute an income tax for the tax on credits.†

From 1849 to 1850 credits were taxable in Wisconsin without any deduction of debts. In the latter year a law allowing the deduction of bona-fide debts from the value of personal property was enacted.* This law was repealed in 1852 and in 1858 deduction from credits was allowed. A law of 1905 exempts, "so much of the debts due or to become due to any person as shall equal the amount of bona-fide and unconditioned debts by him owing."[106]

In Wisconsin up to 1903 mortgages were taxable as personal property and no deduction was made from the value of the property mortgaged. There was double taxation of mortgages. By a law of 1903 it is provided that mortgages shall be taxed as an interest in the property mortgaged. Either the mortgagor or the mortgagee may pay the tax, but the latter is responsible for its payment. The mortgaged real estate is taxable at its full value less the amount of the mortgage, unless the mortgagor chooses to pay a tax on the full value, in which case the mortgage is exempt. The tax on the mortgage is a lien on the property and may be paid by the mortgagor, in which case, unless he has agreed with the mortgagee to pay the tax, the amount of the tax with interest at the rate specified in the mortgage constitutes a legal offset in favor of the mortgagor against the indebtedness secured by the mortgage. Mortgages held by corporations exempt from the general property tax are not taxable under this law.[107] A mass of mortgage statistics gathered by the tax commission show that in nearly every case the mortgagor agrees to pay the tax.

† The amendment was endorsed by the legislature of 1907.

* In 1860, Governor Randall protested against deduction of debts from personal property, since no deduction was allowed from encumbered real estate. *Governor's Message*, 1860, 6.

[106] *Laws of 1850*, ch. 267; *Laws of 1852*, ch. 462; *Laws of 1858*, ch. 115, sec. 1; *Laws of 1905*, ch. 214.

[107] *Laws of 1903*, ch. 378.

Two years after its enactment Governor La Follette declared that the mortgage law of 1903 had proved a great disappointment. No statistics could be brought forward, but it was a matter of common knowledge that the rate of interest on mortgages, as well as on other credits, had not declined since the law was enacted. Observations of bankers and others indicated that the rate had risen. The law was declared to be a source of embarrassment to local assessors, as men of small or moderate means naturally object to being taxed for the full amount of their property, when their rich neighbors, whose wealth is largely in mortgages, are exempt. The law of 1903 exempted about $50,000,000 worth of property, according to the Governor, who, standing squarely on the ability principle, declared credits to be a distinct index of wealth and mortgages, which alone of credits go on public record, as the most accessible kind of credits. The exemption of mortgages, it was declared, was unjust and undemocratic and had not, except in very exceptional cases, proved a benefit to the debtor in Wisconsin, but had added to his burden the amount of taxes that the creditor should pay. The Governor recommended the re-enactment of the old mortgage taxation law with a provision that the mortgagor should be saved from double taxation, pending the adoption of a constitutional amendment permitting a graduated income tax.[108]

The law of 1901 prescribing penalties affecting both assessors and persons attempting to influence assessments by bribery and also the law providing for the dismissal from office by a circuit judge of assessors or members of boards of review guilty of misconduct in office have already been noted. Two other important tax laws were enacted in that year. One gives the State

[108] *Governor's Message*, 1905, 20-21.

In Connecticut any note, bond or other chose in action may be brought or sent to the State Treasurer and a tax of 2 per cent (formerly 1 per cent) on its face value be paid, whereupon the note is declared exempt for five years. Advantage of this provision is generally taken. The low rate seems to effect a taxation of property ordinarily inaccessible. *Industrial Commission*, 1902, XIX, 1039.

The Industrial Commission recommends that notes, mortgages, etc., be taxed at their full value, but at low fixed rates, through appropriate listing and recording systems similar to the Pennsylvania method and as proposed by the New York legislative committee of 1899-1900. *Industrial Commission*, 1902, XIX, 1067.

Tax Commission general supervision of the system of taxation throughout the state, general supervision over assessors and local boards of review, and power to require information relating to assessments and taxation of individuals and corporations. The other law created the office of county supervisor of assessments. Such an officer is elected in each county by the county board, holds office for three years, gives bond for $5,000 to insure a faithful and impartial discharge of his duties, and is under the supervision and direction of the tax commission. Such supervisors have no jurisdiction in cities of 150,000 or over, that is, in the City of Milwaukee. In 1901 also the tax commission was made the State Board of Assessment.[109]

The county supervisors of assessments have been of great assistance to the State Board in its efforts to secure assessments at full values. Their work has brought a greater degree of uniformity into assessments throughout the state. Through their efforts much property that once escaped has been placed on the assessment rolls.[110] The tax dodger, however, is finding a way to interfere with the success of their work. The supervisors use sales of property and corresponding assessments to arrive at correct valuations. The practice of "fixing" considerations in deeds in order to deceive the taxing officers has arisen. Real considerations are made nominal in the deeds. Considerations that are really $6,000 are inserted in the deed as $4,000. A supervisor told the writer that this practice is fast making it necessary for the supervisors to actually view property.

The laws of 1901 have effected considerable progress in the direction of uniformity in the assessment of property at its true cash value throughout the state, and have also accomplished much toward a complete assessment of all taxable property. In 1901 the State Board of Assessment increased the assessments of personal property 97 per cent and of real estate 135 per cent over the previous year. The increase in local assessments from 1899 to 1902 was of personal property 137 per cent, of real

[109] *Laws of 1901*, chs. 220, 237, 445.

Local Boards of Equalization: County Boards—county supervisors, clerk, assessors; City Boards—mayor, clerk, assessors; Village Boards—president, clerk, assessors. *Revised Statutes*, 1878, sec. 1060.

[110] *Report of Tax Commission*, 1903, 5, 6, 8.

estate 105 per cent.[111] Much credit for this great improvement is to be given to the county supervisors of assessments. Governor La Follette said in 1903, "Since public interest was first aroused on this subject, through the effective direction of assessors by the tax commission and by the supervisors of assessments there has been added to the tax roll more than $50,000,000 of intangible personalty in the form of notes, bonds, mortgages and other credits."[112] The significance of this apparently great advance has already been discussed. Wisconsin's system of taxation is still far from being perfect, but the right direction in efforts at reform has been taken,—the direction toward centralized control and administration by skilled officers who will be independent of the people whose property they assess.

D. SALE OF LANDS FOR UNPAID TAXES AND THEIR REDEMPTION

The first state tax law, the law of March 29, 1849, made the following provisions respecting the sale of lands for unpaid taxes. All lands returned to a county treasurer, as provided by law, upon which taxes, interest, and charges shall not be paid by the first of February following their return shall be subject to sale at public auction on the second Tuesday of April immediately following. The sales shall be continued until so much of each such parcel of land is sold as to pay the taxes, interest, and charges due on it. In each case sale shall be made to the person offering the amount of taxes, etc., due, for the least quantity of the parcel. If no such bids are received the whole parcel shall be sold. If any parcel cannot be sold for the amount of taxes, etc. the treasurer shall bid it in for the county at that price. The former owner or occupant of any land sold for taxes, or any other person, may at any time within three years from the date of the certificate of sale redeem such land or any part of it or interest in it, by paying to the clerk of the board of supervisors of the county in which the land was sold, for the use of the purchaser, his heirs, or assigns, the purchase

[111] Ibid., 17, 33.
[112] *Governor's Message*, 1903, 9-10.

price and all subsequent charges, or such proportion thereof as the part or interest redeemed shall amount to, with interest on the total amount at the rate of 25 per cent per annum from the date of the sale. In 1891 25 per cent was changed to 15 per cent.[113] If the land is redeemed within six months after sale interest shall be paid for six months. This provision was inoperative between 1889 and 1891.[114] In addition to the above mentioned payments, those redeeming lands must pay all the taxes and charges imposed upon such land or part thereof or interest therein, since the date of sale, together with interest at 12 per cent. The rate was made 15 per cent in the case of city land, in 1899.[115] In 1859 it was provided that the purchaser or any one holding under him, of lands sold for taxes may at any time within three years from the date of sale sue for a bar to the reclaiming of the land by the former owner, whose only defense lies in showing that the tax for which the land was sold was paid or was illegally assessed, or in recompensing the purchasers as provided by the law of 1849.

The lands of minors or any interest that they may have had in lands sold for taxes may be redeemed at any time during their minority and one year thereafter. Lands, or an interest in lands of idiots, insane persons, and married women may be redeemed at any time within five years after the date of sale.[116] Widowed women were added to this latter category by a law of 1867. In 1852 it was provided that in cases of lands sold for taxes prior to May 5 of that year, the deed for which should be executed subsequent to that date, the original patentee or his assignee might redeem such land by paying to the holder all taxes, costs and fees disbursed by him on account of the land together with interest at 25 per cent, within one year after the recording of the deed.[117]

By a law of 1866 it was provided that when a lot or tract of land has been sold for taxes for five successive years and has been bid in to the county, the title thereto shall vest in the

[113] *Laws of 1891*, ch. 182.
[114] *Laws of 1889*, ch. 415; *Laws of 1891*, ch. 182.
[115] *Laws of 1899*, ch. 94.
[116] *Law of March 29, 1849*, secs. 85, 86, 104.
[117] *Laws of 1852*, ch. 503.

county and such land while owned by the county shall not be taxed. This law does not apply to the lands of minors or insane persons nor did it apply to any certificate then issued until two years after its passage.[118]

The tax commission declared in 1898 that the practical period of six years for redemption and the low rate of interest on tax certificates interfered seriously, in some localities, with a prompt and efficient collection of taxes. The law allowed three years for redemption, but the tax deed may be set aside for any mere technical defect, and usually there is no difficulty in finding such a defect. Hence the period of redemption is virtually extended three years until through the statute of limitations the tax deed becomes absolute. Many northern counties were bordering on bankruptcy because of the difficulty that they experienced in collecting taxes and the opinion prevailed in these counties that a higher rate of interest on tax certificates would both cause a higher percentage of the taxes to be paid and would make certificates more saleable. Many of these counties found it difficult to dispose of their certificates. In October 1898 the counties held in certificates $1,350,796.71 and yet many counties had sold theirs at auction. Price county sold $35,000 worth at 10 per cent; Taylor county, a large amount at 22 per cent; Iron county, $30,000 worth at 12 per cent.[119] Many of these certificates pertained to lands that had been stripped of their valuable timber and were practically abandoned by their owners, hence it seems doubtful that a less liberal redemption policy would have benefited the counties.

E. LOCAL TAXATION AND LOCAL EXTRAVAGANCE. THE RELATIONS BETWEEN STATE AND LOCAL TAXES

Local extravagance has obtained in Wisconsin from the Territorial days and still obtains. Sufficient has been said in this regard of the Territorial period in division I. of this chapter. From the beginning of Statehood the people have complained

[118] *Laws of 1866*, ch. 132.
[119] *Report of Tax Commission*, 1898, 103-105.

more or less of burdensome taxes. The complaint was decidedly pronounced in the early days and it is easily shown that the burden was due to excessive local taxes. In 1852 the Governor pronounced the system of town and county government then obtaining too expensive and hence necessitating a burden of taxation that demanded a radical change. The commission system of Ohio and Indiana was recommended as being much less expensive, less complicated and more efficient.[120] By 1858 the condition had become worse. Constant complaints were made of excessive taxation in cities and incorporated villages. In many of the larger cities taxation was actually oppressive. In the opinion of the Governor, Boards of Trustees of villages and Common Councils of cities had too great powers in the matter of expending public money. The ease with which in the early stages of industry money could be raised on city bonds led to extravagant expenditures and too frequently for purposes other than the payment of necessary expenses or the making of improvements. The faithlessness and extravagance of public officers were declared to be becoming proverbial. In cities there was in some cases a lavish expenditure of public funds for unauthorized purposes and in fulfillment of oppressive and fraudulent contracts. The Governor declared that private corporations are unsafe depositories of public credit and denounced the practice of permitting towns, counties, cities, and villages to lend their credit to private corporations organized to build canals, railroads, plank roads, or to engage in other enterprises.[121] This was forbidden to the state and when one looks back upon the corruption that has marked the management of the state lands, the trust funds and the land grants to railroads, the conclusion is inevitable that the people of Wisconsin may well be glad that the framers of the Constitution and the people who endorsed it discerned a great object lesson in the disastrous experiences of the older states in the period of public improvements preceding the panic of 1837. In the years from 1854 to 1858 the legislature authorized the issue of local bonds to the amount of $11,489,000; the total amount authorized up to 1858

[120] *Governor's Message*, 1852, 9.
[121] *Governor's Message*, 1858, 29.

was fifteen millions, but not all of this was issued.[122] In these figures there is a very strong suggestion of what would have befallen the state, if the constitution had not forbidden expenditures by the state for internal improvements, expenditures either directly or indirectly.

The amount of local indebtedness in 1875 and 1900 may be given at this point. In 1875 the debt of the counties was $3,557,701; the debt of cities, towns, villages and school districts was $7,950,572. In 1900 the counties owed $2,588,681; the cities, etc., $14,771,366.[123]

The credit system of government was responsible in the early days for much of the waste and extravagance that characterized local administration. Governor Harvey in 1862 affirmed that the practice of allowing the circulation and sale of government orders was subversive of an efficient and honest administration of public funds.* He declared that the credit system of managing public expenditures, then still obtaining in the counties, towns, cities, and school districts, with its incident confusion of accounts almost invariably served as a cover to speculation in public funds. In the chapter on Public Debt and State Credit it is noted that state orders circulated up to 1858. Notwithstanding that the state tax was very light in the years 1859, 1860, and 1861, the people had experienced no appreciable relief from the burdens of taxation. In the years 1857 and 1858 the state tax was very high. The ratio of county to state taxes in the period 1857 to 1860 was 2.189; of town to state taxes 2.29.

State Tax (average 1857–60)	$303,005.08
County taxes (average 1857–60)	663,278.12
Town taxes (average 1857–60)	693,881.63
School District taxes (average 1857–60)	551,422.98
Road taxes (average 1857–60) (estimated at 5 mills)	904,510.08
Total	$3,116,097.89

[122] Ibid., 31.

[123] *Secretary of State's Report*, 1875, 42; ibid., 1901–02, 353, 369.

* In 47 of the 50 organized counties of the state in the four years 1857–60 county orders, according to the reports of the clerks of county supervisors, had ranged in value from 62 1-2 per cent to par. The average value for the 47 counties was 81 2-3 per cent. School district orders probably did not have

In some of the cities and in the newer sections of the country the tax burden was even heavier than indicated by the figures above. In one northern county having a population of 828 in 1860, the total taxes in 1859 were $43,760, of which $4,000 went for expenses of tax sales. In 1861, the taxes in this county amounted to $19,395, of which $6,000 was spent in connection with tax sales. The practice of confiscating lands through taxation obtaining in this county serves to illustrate the same practice in very many other counties, especially new counties. An attempt was made to justify this policy and practice by pleading that non-residents had no rights that residents were bound to respect. This struggle between the resident and the non-resident is an old one in Wisconsin, and is still going on in the northern part of the state. This is a struggle that took on a very important aspect in the early history of New Hampshire involving an assertion of both the benefit theory and the ability theory at the same time. In Wisconsin many thousand dollars worth of property are still confiscated annually through taxation. The greater part of the lands sold for taxes in the northern part of the state are sold because the owners are obliged to give them up, as in two or three years the taxes on the lands would amount to more than they are worth. Special assessments for street improvements often result in practical confiscation.[124] In 1862 it was pointed out that this policy of confiscation brought loss to the state because many holders of state lands were obliged because of excessive local taxation to give them up. The books of the school land office show cases in which lands were taxed at the rate of 7 per cent of their value, determined on the basis of the average assessed valuation of property in the county in which they are situated. The injustice of the policy reacted upon the permanent interests of the counties. Their basis of taxation was being constantly reduced; immigration was discouraged; people were driven from within their borders. Such a policy promotes no public interest and benefits only the few who live by public office and speculators in tax titles.[125]

so high a rating as county orders. It is evident that the local units suffered a loss of 18 1-3 per cent on all taxes except State taxes, for which warrants were not receivable. *Governor's Message*, 1862, 16-17.

[124] *Report of Tax Commission*, 1898, 92.

[125] *Governor's Message*, 1862, 14-16.

Nearly every, if not every governor's message refers to the great burdens of local taxation. The following figures give some idea of the relation between state and local taxes in the years 1873 to 1877 inclusive. The figures for the local taxes do not include special assessments, nor was the state tax as large as the figures indicate, because in many years taxes for interest on state loans to the counties, towns etc., are counted as state taxes.

	State Tax	Local Taxes
1873	671,582	7,117,493
1874	526,606	7,169,642
1875	589,789	8,414,893
1876	660,808	7,436,627
1877	554,911	7,476,717

The state rate in 1877 was .00131; the local rate was .01765. The population in 1880 was 1,315,480. In 1878 Secretary of State Warner wrote, "It would seem that a state with a population no greater than ours, at peace with all the world ["in a time of peace" would have conveyed the idea and would not have been ridiculous], engaged in no great work of internal improvement, and with a small state debt, ought to govern its citizens and protect their rights without such excessive levies."[128] In 1901, 3 per cent of the taxes levied went to the state; 22 per cent to the counties; and 75 per cent to the cities, villages, and school districts. In comparing state and local taxes it should be borne in mind that the state derives a very large revenue from public service corporations. In fact, the state has levied no tax for general purposes since 1884, except in 1897 and 1898.

The tax commission in 1898 made some very significant and important observations apropos of local taxation, when it pointed out that the practical importance of local taxation is very far from being appreciated. Of the twenty millions paid annually in taxes in Wisconsin it is probable that at least one million could be saved by better and more economical methods. "The wastefulness and looseness of the present system are such as no business man would tolerate in his own affairs." That the in-

[128] *Secretary of State's Report*, 1878, 34.

telligence and good sense of the people allowed such abuses to continue could be accounted for only on the theory that actual conditions were not known or understood.[127] Extravagance in local public finance in Wisconsin arises through dishonest or incompetent officers, through the purchase of stationery at extravagant prices, through the county order system. Orders are issued in advance of the collection of revenue. Up to 1899 they could not draw interest and were therefore discounted. Consequently a county was often obliged to pay $100 for what would ordinarily cost $85 or $90.[128]

Of the many suggestions offered for the remedying of excessive taxation the tax commission of 1897 recommended but three as free from objection.

(1) The rate of town taxes, exclusive of state, county, and school taxes, should be limited to 2 per cent of the assessed valulation as fixed by the preceding county equalization, and the county board should be prohibited from materially raising or lowering the aggregate valuation of the county.

(2) The statute conferring the powers of villages on towns containing one or more unincorporated villages with a population of not less than 1,000 should be repealed. The effect of this statute has been to encourage certain unincorporated villages in the northern part of the state to spend large sums on electric lighting plants, waterworks, street improvements, police and fire departments and other local improvements without much reference to the legitimate needs of the communities. It is quite natural that the people in the villages, who are a majority of the electors in their respective towns, should be disposed to vote such improvements, when the whole town is to bear the expense. Such a condition entails extravagance and is unjust to landowners, whose holdings are miles from the village benefited. In one town in which the average town taxes levied annually amount to about $30,000, $4,500 was paid for hydrant rental; large sums were expended for electric lights and for street improvements; an expensive fire department was maintained; a town hall costing $30,000 had been built. Such a

[127] *Report of Tax Commission*, 1898, 9.
[128] Ibid., 93-95.

condition is unjust either on the ground of the benefit theory of taxation or the ability theory, because justice demands that the latter be conditioned and qualified by the principle of economic interest.

(3) The advertisement of the expiration of the time to redeem lands sold for taxes should be dispensed with and the rate for advertising the delinquent list should be reduced. A law of 1905 provided for some advance along this line of retrenchment by prescribing that not more than twenty-five cents shall be paid per lot or tract of land advertised for sale for delinquent taxes when the list contains not more than 1,000 entries and not more than fifteen cents for each additional lot or tract.[129] The expense of advertising the expiration of the time for redemption is very great. In 1897 it was $21,000. It was the opinion of the tax commission of that year that such advertising does not serve a public purpose sufficient to warrant this great expense. Any person who has forfeited land for unpaid taxes may learn of the expiration of the time for redemption, from the proper county clerk. The fact that Milwaukee City, raising nearly one-fourth of the taxes of Wisconsin, advertises neither delinquent property nor the expiration of the time for redemption and that no complaint is made suggests that the entire expense of such advertising might be eliminated. In Milwaukee county the printing of descriptions of lands to be sold for taxes costs three cents each, while in sixty counties twenty-five cents was paid; two counties paid twenty-three cents; two, thirty cents; one, fifty cents. Evidence was submitted to the commission indicating the existence of pools among newspapers in certain counties to get a high price for this printing. The cost of this advertising is paid by the purchaser of the tax certificate, but many counties are obliged to buy their own certificates or to sell them below par.[130]

In cities the maximum tax rate allowed by law is now 3½ per cent; it was formerly 3 per cent (a). The county limit has been reduced from 3 per cent to 1½ per cent (b). The town limit has been reduced in the same way. The electors however may

[129] *Laws of 1905*, ch. 413.
[130] *Report of Tax Commission*, 1898, 96-102.

vote an additional 1½ for roads or bridges (c). The limit placed on school districts is 2 per cent: it was formerly 5 per cent (d).

In the Territorial period and in the early years of Statehood many counties were very remiss in the matter of paying their full shares of the taxes levied by the central government. The state inherited a territorial arrearage of $10,321. In 1857, $36,000 remained due and unpaid; in 1858, the panic of 1857 had increased the amount to $78,000; in 1862 it was only $13,000, which rose to $45,000 in 1863. By a law of 1858 counties remiss in the matter of paying state taxes are to be charged 25 per cent interest on the amount owed and while indebted to the state shall draw no money from the state treasury. In 1859 the penalties for the year 1858 were refunded.[181]

F. GENERAL PROPERTY TAXES LEVIED BY THE STATE*

1848—A tax of 4.5 mills for general purposes.†
1849—A tax of 4 mills for general purposes.
1850—A tax of 2 mills for general purposes. (Ch. 224.)
1851—A tax of 3 mills for general purposes. (Ch. 332.)
1852—A tax of 3.3 mills for general purposes.
A tax of .5 of 1 mill on account of State loan.
A total tax of 3.5 mills. (Ch. 463.)
1853—A tax of 5.6 mills for general purposes.
A tax of .4 of 1 mill on account of State loan.
A total tax of 6 mills. (Ch. 84.)
1854—A tax of $225,000 for general purposes. (Ch. 73, sec. 8.)
1855—A tax of $350,000 for general purposes. (Ch. 68.)

[181] *Secretary of State's Report* for the several years. *Laws of 1858*, ch. 152, sec. 5. *Laws of 1859*, chs. 29, 67, 96.
(a) *Laws of 1899*, ch. 262.
(b) *Laws of 1895*, ch. 293. *Laws of 1903*, ch. 439.
(c) *Laws of 1895*, ch. 293. *Laws of 1903*, ch. 439.
(d) *R. S.*, 1898, sec. 4309. *Laws of 1903*, ch. 439.
*For an analysis of these taxes see chapter on Receipts and Expenditures.
† For absolute amounts see chapter on Receipts and Expenditures. Taxes for general purposes were apportioned among the counties on the basis of general property valuations.

The tax was high this year because it had been discovered by the Finance Committee of the Senate that the state was behind $176,655.

1856—A tax of $300,000 for general purposes. (Ch. 131.)

1857—A tax of $300,000 for general purposes. (Ch. 79.)

1858—A tax of $350,000 for general purposes. (Ch. 121.)

$250,000 for the expenses of the year 1859; $100,000 for deficiencies.

A 1-5 of 1 mill tax for interest on bonds. (Ch. 20.) This tax was levied in the years 1859, 1860, 1861 and 1862 also.

1859—A tax of $150,000 for general purposes. (Ch. 111.)

1860—A tax of $150,000 for general purposes. (Ch. 267.)

1861—A tax of $200,000 for general purposes.

1862—A tax of $150,000 for general purposes.

1863—A tax of $75,000 for general purposes.

A tax of $200,000 for families of volunteers. (Ch. 139.)

1864—A tax of $200,000 for families of volunteers. (Ch. 349.)

A tax of $235,000 for general purposes. (Ch. 450.)

1865—A tax of $350,000 was authorized or so much of that sum as the Governor, Secretary of State, and State Treasurer might decide was necessary for the expenses of 1866 and the deficiency of 1865.

1866—A tax of $100,000 for general purposes. (Ch. 98.)

An annual tax sufficient to pay the interest on the amount of the 5 per cent fund withheld by the federal government as an offset to an equal amount for which the Territory of Wisconsin became responsible on account of the Rock River Canal Lands. (Ch. 79.)

The amount withheld was $101,262.33.

1867—A general tax of $475,000. (Ch. 114.)

A tax of $7,303.76 for the University. This was to be levied annually for ten years.

1868—A total tax of $259,000.90. (Ch. 112.)

1869—A total tax of $293,132.54 (Ch. 97.)

The Secretary of State was authorized to add to a tax pro-

vided for by law, when the tax authorized is insufficient to balance the appropriations by the legislature and existing laws. (Ch. 153.)

1870—A general tax of $480,000. (Ch. 119.)

1871—A general tax of $340,000. (Ch. 125.)

1872—A general tax of $500,000. (Ch. 98.)

A tax of $10,000 for the University to be levied annually. An attempt to justify this tax was made by claiming that the University Fund had suffered because of the sale of University lands at low prices in order to induce immigration and further settlement by actual settlers. It is true that the Fund suffered because of premature sales at low prices, but there is a large element of fiction in the rest of the claim.

1873—A general tax of $321,110 (Ch. 225.)

1874—A general tax of $287,525 (Ch. 320.)

1875—A general tax of $236,126 (Ch. 253.)

1876—A general tax of $383,829 (Ch. 328.)

A tax of 1-10 of 1 mill for the University to be levied annually.

This tax amounted to something over $40,000.

1877—A general tax of $263,875 (Ch. 254.)

1878—The annual tax on account of the withholding of part of the 5 per cent fund was made $7,088.66.

A general tax of $405,000 (Ch. 294.)

1879—A general tax of $248,000 (Ch. 250.)

1880—A general tax of $453,000 (Ch. 264.)

1881—A general tax of $240,000 (Ch. 334.)

1882—A general tax of $500,000 (Ch. 312.)

1883—A tax of $110,000, (*Laws of 1883* Ch. 195.)

1884—A tax of $240,000 (*Laws of 1883* Ch. 195.)

This tax of $240,000 was not levied. The surplus in the treasury, together with increased revenues from railway, insurance, telegraph and telephone companies made a tax for general purposes unnecessary in 1884, which marks a cessation in the practice of borrowing from the trust funds to make up deficits.[182] The practice was resumed in 1895. Except in the years 1897 and 1898 there has been no state tax for general

[182] *Secretary of State's Report*, 1883-84, 30.

purposes in recent years. Taxes, however, for the following purposes have been levied,

1. Interest on certificates of indebtedness, representing loans from the trust funds to towns, etc.
2. Common Schools (the one mill tax.)
3. University.
4. Free high schools.
5. The fifth normal school.
6. Support of patients in the State Charitable Institutions. (Each county pays for its residents only.)

The only taxes, except in 1897 and 1898, since 1884 have been for education, and if the education funds and lands had been conserved these also would be unnecessary.

1885—An annual tax of 1 mill for the benefit of the school fund income. (Ch. 287.)

An annual tax of $10,000 for the fifth normal school. (Ch. 364.)

1889—A tax of $200,000 for University buildings (*Secretary of State's Report*, 1889-90, 4.)

A special tax of 1-10 of 1 mill to be levied for 6 years, for university buildings. (Ch. 29.)

1893—An annual tax of 1-20 of 1 mill for normal schools. (Ch. 185.)

1895—An annual tax of 1-5 of 1 mill for normal schools. (Ch. 91.)

1895—A tax of 1-10 of 1 mill for three years, beginning in 1897, for the Historical Society building. (Ch. 298.) Made seven years in 1897 (Ch. 237.)

In 1899 this tax was discontinued (Ch. 296), and $500,000 was appropriated from the general fund, and $15,000 annually for the maintenance of the building.

1895 (Ch. 241.). 1897 (Ch. 284.)—An annual tax of 1-5 of 1 mill for the University.

1897—An annual tax of 1-10 of 1 mill for normal schools.

1897—A tax for general expenses of 3-10 of 1 mill in the years 1897 and 1898. (Ch. 148.)

1899—Provision was made for specific taxes for the University and the normal schools, in lieu of the mill taxes, $268,000

for the University; $180,000 for the normal schools. (Ch. 170.)

1901—The University tax was made $289,000. (Ch. 322.)

Normal school tax increased to $215,000 . (Ch. 370.)

1903—The University tax was made $291,000. (Ch. 135.) An appropriation was made for the common school fund of a sum equal to 7-10 of 1 mill on the valuation of all property exclusive of the property of corporations that pay special taxes. This appropriation comes from the corporation taxes to the extent of $200,000 and the balance comes from a general tax. This appropriation is an annual one; this is in lieu of the one mill tax. (*Laws of 1903,* Ch. 313.)

An additional tax of $485,000 for the University, and a tax of $7,500 for two years for the University library.

1905—An annual tax of 2-7 of 1 mill for the University. (Ch. 320.)

1907—Annual appropriation of $20,000 for educational extension and correspondence teaching. (Ch. 413.) Annual appropriation for four years of $100,000 for women's building and men's dormitories. (Ch. 428.)

CHAPTER VIII

STATE TAXES FOR EDUCATION *

I. Free High Schools

The free high schools of the state are for the most part maintained partly by the state and partly by the local administrative units. Some of the free high schools do not accept aid from the state. The free high school law of 1875 provided that when a high school had been established and maintained for thirteen weeks or more in any year in any high school district, such district was entitled to receive from the state a sum equal to one-half of the amount actually expended for instruction in the school, but no town, city, or village was to receive more than $500 a year, except that high school districts having a population of more than 3,000 were entitled to $100 additional for each additional 3,000 inhabitants. The amounts raised locally for high schools are exclusive of the amounts required by law to be raised for common schools. High school districts are permitted to make arrangements for the education of their boys and girls with academies and colleges having preparatory departments, and to receive aid from the state in the same manner and to the same extent as they would if they established high schools. The law of 1875 provided that a sum not exceeding $25,000 is to be appropriated annually from funds not otherwise appropriated to aid in high school education, but each year the Secretary of State is to add to the tax apportionments of the several counties sums equal to the amounts granted by the state for free high schools in the respective counties, so that the state aid in form is in reality county aid.[1]

*See Chapter VII, Section F, for taxes for University.

[1] *Laws of 1875*, ch. 323.

The Revised Statutes of 1878 limited this aid to three years in the case of each school. In 1879 the time was made five years; in 1882, ten years and in 1885 the aid was made annual. In 1899 the maximum amount to be granted to free high schools was made $75,000.[2]

By the law enacted in 1885 aid was provided for free high schools in towns in which there are no graded schools. This aid is the same as that granted to other free high schools and shall not in the aggregate exceed $25,000 a year.*

A law of 1897 providing for the organization of manual training departments in high schools declared that such departments when of approved standing are each entitled to receive from the state, provided that they are maintained for six months in the year, $250 annually, but the total aid so granted is not to exceed $2,500 a year, which sum is included in the state tax levy. An amendment of 1899 provides that not more than twenty schools shall receive such aid and the total amount granted annually by the state is not to exceed $5,000. The additional $2,500 is paid out of funds in the state treasury.[3]

II. County Training Schools and Schools of Agriculture and Domestic Economy

In 1899 county training schools for common school teachers were authorized in counties in which there are no State Normal Schools. Such training school, if of approved character and standing, is entitled to receive from the state annually an amount equal to one-half of the sum expended for the school provided that the school has been maintained for ten months in the year. The total amount paid to such schools annually shall not exceed $2,500, which amount is apportioned annually as part of the state taxes.† A law of 1901 authorizing county boards to appropriate money for the organization, equipment,

[2] *Revised Statutes*, 1878, ch. 27, sec. 496. *Laws of 1879*, ch. 245, sec. 5. *Laws of 1882*, ch. 22. *Laws of 1885*, ch. 420. *Laws of 1899*, ch. 214.

* Aggregate maximum made $50,000 in 1907. *Laws of 1907*, ch. 571.

[3] *Laws of 1899*, ch. 273.

† Not more than twenty are to receive aid. *Laws of 1907*, ch. 601.

and maintenance of county schools of agriculture and domestic economy, in which are to be taught the elements of agriculture, including instruction as to the soil, and plant and animal life on the farm, also a system of farm accounts and domestic economy, provides that such schools, if of approved standing, are entitled to receive from the state one-half of the sum actually expended in support of the respective schools. In 1903 it was provided that state aid might amount to two-thirds of the sum expended and that the school should be conducted for eight months. Not more than $4,000 is to be paid to any one school in any one year.[4]

III. Schools for Deaf Mutes and for Dependent and Neglected Children

In 1885 it was enacted that there should be paid out of the state treasury each year to the treasurer of every incorporated city or village maintaining a school or schools for deaf mutes, under the charge of a teacher or teachers of approved qualifications, to be determined by the state superintendent of public instruction, $100 for each deaf mute instructed for at least nine months in the year next preceding the first of July and a proportionate amount for each pupil receiving instruction for less than nine months. The apportionment for each pupil was increased to $125 in 1893 and to $150 in 1897.[5] Another law of 1885 appropriated $30,000 for a "State Public School" for dependent and neglected children. Children dependent upon public support and over three and under fourteen years of age are receivable into the school. An amendment of 1901 provides for the admission of crippled children under fourteen, who are of sound mind and whose physical defects are such as to admit of proper treatment in the school. Children admitted to the school may be kept there until they become sixteen or longer until good homes can be secured for them. The object of this school, which is located at Sparta, Wisconsin, is to pro-

[4] *Laws of 1899*, ch. 268. *Laws of 1901*, ch. 288. *Laws of 1903*, ch. 143.
[5] *Laws of 1885*, ch. 315. *Laws of 1893*, ch. 305. *Laws of 1897*, ch. 321.

vide a temporary home for dependent children until homes can be found for them in good families. There is an annual appropriation for the payment of the current expenses of the institution.[6]

IV. The One Mill Tax for Common Schools

Since 1885 there has been levied annually a tax of one mill for the benefit of the School Fund Income. Up to 1901 underassessment kept this tax down to about $600,000 and its burden was not felt, but since that year assessments at higher values have increased the amount of the tax greatly. In 1900 it was $630,000; in 1901 it was $1,436,284 and in 1902 it was $1,504,346. In 1902 in many districts no district school tax was levied; the schools were supported entirely by the school fund apportionment and by the corresponding county tax. In some districts a tax was collected and a surplus was the result. Conditions giving rise to surpluses have a tendency to promote waste and extravagance. A large fund tends in many instances to do away with the very desirable local interest that obtains when a community is at least in part responsible for the support of its schools. This argument against too large a school fund it will be recalled was advanced in the state constitutional convention. "The policy of requiring the older and wealthier portions of the state to contribute to the educational expenditures of those less fortunate promotes good citizenship and is socially expedient so long as the contribution is not excessive and can be profitably and economically expended" and only so long. The State Tax Commission in 1903 recommended that the tax be reduced to a definite amount, $700,000, which with the school fund income would make $900,000 and this sum with the amounts raised by the county boards would give $1,800,000. The tax was reduced to seven tenths of one mill in 1903. Of this amount $200,000 is taken from the corporation taxes.[7]

School districts having within their limits a state graded

[6] *Laws of 1885*, chs 377, 457. *Laws of 1901*, ch. 109.
[7] *Report of Tax Commission*, 1903, 39, 43. *Laws of 1903*, ch. 313.

school but no free high school or a high school of equal rank may receive special state aid. Such a district having a school of three or more departments may receive annually from the general fund of the state $300; those having a graded school of two departments, $100. This arrangement does not apply to schools in incorporated cities. The total amount of such aid was made in 1901, when it was provided for, $60,000, but this was raised to $80,000 in 1905.[8] By a law of 1907, $300 is granted to schools of the first grade and $200 to those of the second grade. The maximum aid was made $120,000.[9]

[8] *Laws of 1901*, ch. 439. *Laws of 1905*, ch. 332.
[9] *Laws of 1907*, ch. 375.

CHAPTER IX

TAXATION OF RAILROADS

The first railroad charters granted in Wisconsin were granted by the Territorial Legislature in 1847, but the first line, a short one of twenty miles extending from Milwaukee to Waukesha, was not completed until 1851.[1] Up to 1854 the little railroad property that there was in Wisconsin was taxed locally just as other property was taxed, but in that year the Governor, observing how greatly Wisconsin's development depended upon the opening up of numerous lines of communication and transportation, recommended the encouragement of the construction and development of railroads and other means of transportation and communication by a liberal state policy with respect to such enterprises, including a liberal taxation policy. Accordingly there was introduced in the Assembly a bill to levy in lieu of all other taxes upon the property of railroad, plank road and telegraph companies a gross receipts tax of one-half of one per cent. In the Senate the rate was raised to one per cent and telegraph companies were excluded. It was proposed in the Senate that the tax be one-half of one per cent for state purposes and one-half of one per cent for town and county purposes. It was proposed also that local taxation of lands, depot buildings, and fixtures be continued. The vote on the latter amendment was 13 to 7 against the proposal. The bill as finally enacted into law provided for a tax of one per cent, in lieu of all other taxes upon the property of railroads and plank roads or upon

[1]The companies chartered in 1847 were the Milwaukee and Waukesha, the name of which was changed in 1848 to the Milwaukee and Mississippi; the Lake Michigan and Mississippi; the Fond du Lac and Beaver Dam; and the Sheboygan and Fond du Lac. *Laws of 1847*, 23, 72, 158, 194.

the stock of their stockholders, on gross earnings.* In case only a part of a road lay in Wisconsin the tax was to amount to such part of one per cent of the gross receipts as Wisconsin should be entitled to on a per mileage basis. The roads were required to make reports of their gross earnings before January 10, each year, supported by the affidavit of their respective secretaries and treasurers. In case of failure to so report a railroad forfeited $10,000 for each failure and the Treasurer of the state was to proceed to ascertain the gross earnings as nearly as possible and to levy the tax. If a railroad failed to pay its tax, its property, rights and franchises were to be sold by the State Treasurer, and in addition he might sue for the forfeit. Thus Wisconsin inaugurated a gross earnings tax on railroads, which with modifications obtained until 1903. When once this "infant industry" policy had been adopted the railroads like every other industry fostered by legislation resisted its abandonment even after the conditions that gave it birth had passed away.[2]

In passing it may be observed that there is no little question as to the validity of this law of 1854 on the ground of illegal, unconstitutional enactment. A constitutional rule requires that in its passage through each house "any law which imposes a tax or commutes a claim of the state shall be passed by yeas and nays, which shall be duly entered on the journal of each house and three-fifths of all the members elected to each house shall be necessary to constitute a quorum for the passage of such a law." The original House bill provided for the exemption of plank roads from taxation. The substitute reported by the Judiciary Committee providing for the taxation of railroads, plank roads and telegraph lines passed the Assembly but there is no record in the journal of the yeas and nays having been taken. In the Senate journal there is evidence that the yeas and nays were taken on amendments, but no record of their having been taken on the bill itself. This bill, Assembly Bill 52, was

*This law of 1854 was sometimes spoken of as a law exempting railroads from taxation and of course it did exempt them in part. The railroads were built largely with foreign capital and it was declared therefore to be unjust and unwise to burden them as in many cases with more than half of the taxes of the towns through which they passed. *Milwaukee Sentinel*, Feb. 4, 1854.

[2] *General Laws*, 1854, ch. 74.

passed upon twice by the Assembly and once by the Senate, but in no instance does the record show that the yeas and nays were called and neither is it indicated in the journals that a quorum of three-fifths was present. In each case the vote was taken under the suspension of the rules.[3]

In 1860 in the case of the *Attorney General vs. The Winnebago Lake and Fox River Plank-road Company* the Supreme Court of the state pronounced the gross receipts tax of 1854 unconstitutional and hence in the same year the legislature provided for a license fee of one per cent on gross earnings. Failure on the part of a company to make a report of its gross earnings to the State Treasurer, apply for a license and pay the so-called fee constituted a cause for a forfeiture of its franchise and charter. In 1862 the tax on railroads was raised to 3 per cent.* This resulted from the Governor's recommendation that the rate be increased, as 1 per cent was too low. The average rate on other property was estimated to be 1¾ per cent. In 1861 there were in Wisconsin 863.5 miles of railroad, which the Governor estimated to be worth $14,952,500 or about $15,000 a mile. Their earnings in 1861 were $2,991,558.86, hence their taxes amounted approximately to $30,000. On an ad valorem basis even at 1 per cent they would have paid five times as much. The Governor declared that the roads were rapidly passing into the hands of first creditors at prices that made them the most productive property in the state. The time was said to have passed when it was just and politic to favor the railroads at the expense of the other property of the state. The Governor believed it impracticable, however, to allow local taxation of railroad property, and the unequal earning powers of the roads argued that a tax on earnings was the most equitable tax.[4]

A law of 1871 provided that railroads indebted to towns, cities, or villages should pay an annual license tax of 5 per cent on gross earnings. The additional 2 per cent was credited to

[3] *Assembly Journal*, 1854, 80, 610, 681. *Senate Journal*, 1854, 539, 580, 601.

*In 1897 the rate on plank roads was made 3 per cent, and it was provided that the failure of a plank-road company to make a return of its gross earnings and pay its tax should work a forfeiture of $500. *Laws of 1897*, ch. 317.

[4] *11 Wisconsin*, 37; *General Laws*, 1860, ch. 174; ibid., 1862, ch. 22; *Governor's Message*, 1862, 17-18.

the proper town, city or village and applied to the payment of the bonds issued by the town, or city, in aid of the railroad and to the payment of the interest thereon. Such bonds were not, however, to bear interest or to become payable until they were registered and they were not to be registered until the railroad had been completed to such a point as had been agreed upon between the town, city or village and the railroad company.[5]

In his report for 1873 the Secretary of State made a vigorous attack on the gross receipts tax, declaring it to be in violation of the constitutional rule of uniformity and recommending that the railroads be taxed by the State Board of Assessment on their assessed valuation and at the average rate on the general property of the state. It was estimated that the proceeds of such an ad valorem tax on the railroads would defray all the expenses of the State Government. Just thirty years later this recommendation by Secretary of State Lloyd Breese was enacted into law. The average rate of taxation in Wisconsin in 1873 was figured out to be 2.23 per cent, but it should be borne in mind that property was greatly underassessed. Assuming that the railroads in Wisconsin were worth what they cost, if taxed on the ad valorem basis and at the rate of 2.23 per cent they would have paid over five times as much in taxes as they were paying. Their cost was reported at $61,459,374.81 or $35,566.36 a mile. They paid in taxes in 1873, $210,374.99. If they had been worth only one-half of their cost they would have paid on the ad valorem basis a tax of 7.97 per cent on their gross earnings, whereas they were paying only 3 per cent. The stock and bond method of valuation would have yielded a tax of 13 per cent on gross earnings. Assuming that the roads were worth only the value of their bonds the ad valorem tax would have amounted to over 9 per cent of their gross earnings. If their valuation had been determined by capitalizing their net earnings, $3,830,128.47, at 7 per cent, the ad valorem tax would have yielded an amount equal to 9.94 per cent of their gross earnings.[6] However, as the general property of the State was assessed at only about 50 per cent of its true value the real

[5] *General Laws* 1871, ch. 48, secs. 5, 9.
[6] *Secretary of State's Report*, 1873, 28-30.

average rate was about half of 2.23 per cent and consequently the percentages above should all be divided by two.

The next year, 1874, the rate was raised to 4 per cent and in 1876 a graduated tax was provided for. Companies whose gross earnings were equal to or greater than $3,000 a mile paid a tax of 4 per cent on their gross earnings. Companies whose gross earnings were less than $3,000 but more than $1,500 paid $5 per mile and 2 per cent of their gross earnings in excess of $1,500 a mile. Companies whose gross earnings did not exceed $1,500 per mile paid $5 per mile. This law was a great concession to the weaker roads and was an attempt to equalize conditions with respect to the taxation of railroad property. The scale was not changed until 1897 when it was provided that railroads whose gross earnings equaled or exceeded $2,500 a mile and were less than $3,000 should pay 3½ per cent of their gross earnings. Railroads whose gross earnings equaled or exceeded $2,000 but were less than $2,500 paid 3 per cent. Companies whose earnings equaled $1,500 and were less than $2,000 paid $5 a mile and in addition 2½ per cent of their gross earnings in excess of $1,500. The rate of 4 per cent on railroads whose gross earnings equaled or exceeded $3,000 per mile was continued, also the rate of $5 per mile on companies whose gross earnings were not in excess of $1,500 a mile.[7]

In 1884 it was pointed out by the then Railroad Commissioner, Honorable Nils P. Haugen, that the railroad tax law was faulty in that it did not require the State Treasurer to consult the Railroad Commissioner as to the proper amounts to be paid by the roads, although the commissioner had superior advantages for testing reports made by the companies. There was a very strong temptation for the companies to evade a part of their

[7] *Laws of 1874*, ch. 315. *Laws of 1876*, ch. 97. *Laws of 1897*, ch. 182.

A law of 1876 entitled "An act to encourage the construction and maintenance of pontoon bridges" required pile and pontoon bridge companies to be licensed and to pay a license tax or fee of 2 per cent of their gross receipts. Such companies were made exempt from all other taxes. *Laws of 1876*, ch. 113. The revised statutes of 1878 provided that railroads operated on pile or pontoon and pile bridges should pay a license tax of 2 per cent of gross earnings. *Revised Statutes*, 1878, ch. 15, sec. 1213. A law of 1891 provided for the same tax on corporations, companies or persons operating or controlling dams, booms, sluiceways, etc. *Laws of 1891*, ch. 424.

tax. When a company's earnings were $3,000 per mile or a little more it was strongly tempted to stretch its mileage so as to make its earnings appear to be below $3,000 a mile. At that time the railroad was its own assessor, since the law did not compel the state treasurer to wait before issuing licenses until he had received the reports of the Railroad Commissioner or to consider those reports in fixing the railroad license taxes.[8] This defect was subsequently remedied, but the state authorities maintain that notwithstanding the railroads have for years systematically defrauded the state by falsifying their reports of gross earnings.[9] The controversy between the state and the railroads turns upon the question whether receipts from certain sources should or should not be included in gross earnings. A special investigation of the matter was begun by the Railroad Commissioner October 1, 1903, and is still being prosecuted. The Commissioner charges that the roads have wrongfully deducted from gross earnings before reporting the same for taxation the following items:

1. Commissions and repayments to shippers on freight traffic.
2. Commissions and repayments on passenger tickets.
3. Expenses of operating hotels.
4. Expenses of operating sleeping cars.

He maintains furthermore that they have failed to report for taxation amounts that are parts of their gross earnings and are derived from the following sources:

1. Credit balances from car mileage.
2. Switching charges.
3. Storage, demurrage and miscellaneous.
4. Rental of tracks and terminals.

Having indicated briefly the points in controversy the writer will now proceed to their elucidation and discussion. The completed investigation which has had to do with the largest ten roads reveals that in the years investigated, 1897 to 1903 inclusive, these ten roads repaid to shippers in the form of commissions and rebates and deducted the same from gross earnings over five million dollars. As these rebates given to meet lake

[8] *Report of Railroad Commissioner*, 1883-84, 13.
[9] *Governor's Message*, 1905, 22-25.

competition and the competition of shorter competing railroads were not accorded to all shippers from the points affected by such competition they were clearly illegal. Other large deductions have been made for commissions to shippers. The beneficiaries of these commissions have been lumber and coal merchants, paper and other manufacturers, refrigerator car owners and owners of so-called "industrial lines," which are no more than systems of side-tracks around manufactories. By dividing a through rate with one of these so-called "industrial lines" a railroad is able to give a disguised rebate. Wisconsin's proportion of the gross earnings of the roads has been reduced also by the deduction of commissions paid to the officers of other lines of railroad. Illegal rebating has operated to cheat not only the small and non-favored shipper but the state as well. Many of the roads have followed the practice of deducting from their gross earnings refunds made to encourage new industries on their lines. The commissioner maintains that when hotels and lunch counters and sleeping cars are operated by a railroad the expenses of their operation should not be deducted from gross receipts, but should be charged to operating expenses. Such deductions have been made by the roads investigated. Discriminating refunds have been made on passenger as well as freight traffic and commissions for business have been paid freely to agents and representatives of other lines and deducted from gross earnings. In railway accounts in recent years the account called "tickets redeemed" has been used to cover up refunds or rebates to shippers, wholesale merchants and manufacturers to recoup them for sums paid by themselves and their employes for passenger transportation. Tickets from Wisconsin to the East and vice versa through Chicago include without extra charge bus transportation from station to station in Chicago. It has been the practice of the railroad companies to make a deduction from their gross receipts of the amount of the transfer company's charge, which deduction it seems to the writer is perfectly legitimate, for the bus line is in so far as the railroad is concerned akin to a rented line. The Railroad Commissioner, John W. Thomas, maintains, however, that when a railroad sells a through ticket, charging only the regular rate,

it has no right to deduct from the transportation so collected any part of the operating expenses of carrying the passenger to his destination as indicated by his ticket. The roads, it seems to the writer, are entirely right also in their contention that receipts from the rental of their tracks to other companies should not be included in gross earnings, as the roads renting the tracks and using them pay the gross receipts tax on business derived from such use. In the opinion of the writer, the commissioner is clearly in the wrong on this point. Two of the large railway companies operating in Wisconsin have from time to time purchased stocks and bonds of other corporations, which stocks and bonds are sources of a large income. The companies have very properly, considering the matter from the economic point of view, excluded this income from their reported gross earnings. It is clear that the companies do not receive this income from their business; why should it therefore be included in the profits of their business? If John Smith held a Chicago and Northwestern bond he was not taxed on it; then why should it be taxed if it were owned by the Chicago, Milwaukee and St. Paul Railroad Company? It is equally clear, however, that the companies have no right to deduct their expenses for advertising, which include salaries and expenses of traveling and other expenses of advertising agents, expenses of bill posting, of printing and publishing time tables for general distribution, printing or advertising matter, advertising in newspapers and periodicals, publishing reports in newspapers, of bulletin boards, cards, cases, dodgers, folders, hand-bills, maps, pamphlets, photographs, posters, etc., premiums and donations to fairs and stock shows, immigration boards, etc. Such expenses, usually paid for in tickets or mileage books amounted in the year investigated to $132,645.92, which should have been included and reported in gross earnings. Demurrage is a penalty imposed upon a shipper who delays a car in loading or unloading beyond a certain fixed period. Some of the roads have included this item in their reports of gross earnings; others have not. As the commissioner contends, it is clearly a part of gross earnings.

At this point it will be well to notice an important decision handed down by the State Supreme Court in 1885 in the case

of the *State vs. McFettridge, State Treasurer.* This decision has to do with both the classification of the railroads for taxation and with the question of the inclusion in gross earnings of moneys received for the use of cars, or car mileage as it is called. A majority of the Court maintained that in determining to what class a railroad belongs for purposes of taxation the state should consider only the number of miles operated and the gross earnings in the year preceding, regardless of the length of time that the road was operated in that year. They contended that otherwise the statute would require a report of the time operated. The construction put upon the statute by the state treasurer may be indicated thus: if a road was operated for only six months in the year and in that time earned $1,500 a mile, it belongs in the $3,000 class. Justice Cassoday upheld this contention, maintaining that the words "per mile per annum" used many times in the law had the same meaning as per cent per annum in commercial law. The Court was unanimous in the opinion that spur tracks should be included in computing total mileage. The rental paid for a leased road it was decided should not be deducted from the gross earnings upon which the license tax was computed. One company issues bonds and with the proceeds builds a railroad; another company rents a railroad already built; one pays interest; the other, rent, which should not be deducted from gross earnings any more than interest should. Apropos of moneys received for the use of cars it was decided that the amount received in excess of the amount paid out for the use of the cars of other companies constitutes a part of the gross receipts upon which the license tax is to be computed.[10] Nearly all of the ten roads investigated have covered up their car mileage balances by including in car-mileage rentals of private cars.

There have been improper deductions, by one company, based on accounting methods that are unfair to Wisconsin. Charges for switching in Chicago are often repaid in whole or in part to the shipper and in making vouchers for these refunds the practice prevailed of charging the amount of the voucher one-half

[10] *64 Wis.*, 130.

to one of the divisions of the road entering Chicago and one-half to the other, but in deducting the amount of such vouchers from freight earnings, instead of apportioning the deductions according to actual distance or territory over which the service was rendered, the total amount of such voucher for each operating division of the road was divided between the states in the proportion that the earnings of each state bore to the total earnings of the division. Vouchers amounting to many thousands of dollars have been charged to gross earnings in Wisconsin in cases in which no part of the original service was rendered in Wisconsin and hence that state never received any of the original credit connected with such transportation transactions. The officials of the company when their attention was called to the matter admitted readily that Wisconsin had probably been largely overcharged in the apportionment of vouchers of this kind.[11] From the strictly legal point of view the Railroad Commissioner is undoubtedly right in all his contentions, for numerous state courts have decided that income when not qualified in a tax law may be construed to mean that which is received from any service, business, or investment of capital.[12]

Earlier in the history of the administration of the gross receipts tax law differences of construction other than those that now obtain arose between the Railroad Commissioner and the railroads. Some of the same differences obtained then also. The earlier controversy turned upon the inclusion or exclusion of,

1. Amounts received for switching.
2. Amounts received for car-mileage.
3. Amounts received for rental of tracks, yards and terminals.
4. Amounts received from stocks and bonds owned.
5. Amounts received as interest on deposits.
6. Amounts received from loans and discounts.
7. Amounts received from use of elevators and storehouses.

The railroads insisted that they paid out more for car mileage

[11] *Special Report of Railroad Commissioner to the Governor*, March 23, 1905. For amounts that the State claims the companies have withheld, see tables at the end of this chapter.

[12] Vide Cooley: *On Taxation* (1903 ed.), 685.

and switching than they received. They very properly held as they now hold that to tax rentals for tracks, yards and terminals produces double taxation.[13]

As has been noted above the ad valorem tax on railroads was suggested and recommended as early as 1873 but until 1903 the railroads were successful in their endeavors to prevent a change in the methods by which they were taxed. In the thirty years intervening many memorials were presented to the legislature asking and even demanding that the method of taxing railroads be changed. In 1885, D. K. Tenney, who was one of the special tax commissioners appointed in 1867, presented to the legislature a very able memorial in which he contended that the time for favoring the railroads by lightening their taxes had passed and advocated that if any of the roads were still weak and needed preferential treatment that such roads and not all the roads be given such treatment, which it will be recalled had for its purpose the encouragement of railroad construction and development. It is difficult to see, however, how under the state constitutional rule of uniformity and the fourteenth amendment a classification of the roads into weak and strong roads and the application of different methods of taxation could have been effected. Mr. Tenney recommended a tax of $100 a mile and an additional tax of 1 per cent on value.* In 1884 the railroads paid in taxes $719,487. A tax on their earnings capitalized at 6 per cent would have yielded $2,121,459; capitalized at 4 per cent, $1,414,305.[14]

In 1900 the Tax Commission undertook to find out the value of the railroads in the state in so far as possible, and where practicable employed the stock and bonds method, which the rail-

[13] *Report of Railroad Commissioner*, 1899-1900, 32-33.

*It should be noted that as a remedy for assessment evils Mr. Tenney advocated that there should be a state assessor who should have control of all assessments in the state and should appoint on a basis of non-partisanship and efficiency county and district assessors whom he should have power to remove at will. This state assessor and the county assessors were to give all their time to the work of assessment and special deputies were to be appointed to visit the counties, direct the work and report derelictions of duty and official offenses.

[14] *Wisconsin Miscellaneous Pamphlets*, Vol. 28. 5, 10, 11, of Mr. Tenney's Memorial.

roads attacked vigorously and earnestly as being unsound. They argued that many circumstances in the stock market tend to increase or to depress the price of securities and accordingly the stock and bonds method was not a reliable means of determining value. This method has, however, been upheld by the Supreme Court of the United States.[15] In the celebrated Adams Express Company case Mr. Justice Brewer said, "Substance of right demands that whatever be the real value of any property, that value may be accepted by the State for the purpose of taxation. The value which property bears in the market, the amount for which its stock can be bought and sold, is the real value." The Tax Commission found it expedient to classify the roads in two groups, placing in the first group the large roads having the greater earning power and whose stocks and bonds have a market value, and in the second group the roads having less mileage and smaller earning power. The work of the commission was hampered by the failure of all but five small roads to report the values of their stocks and bonds. Accordingly, market quotations were used and in order to eliminate the affect of certain influences, such as tightness of the money market, manipulation, etc., that might have affected prices temporarily, the highest and lowest market prices for each month were taken for periods of five years, three years, and one year ending December 31, 1899. Of the aggregate values thus obtained Wisconsin's per mileage share was taken as the taxable basis. In the cases of three of the smaller roads in the first group values were determined partly by comparing their bonds with other similar bonds quoted in the market and partly by capitalization of net earnings. In some cases it was impossible to get quotations for three and five years. In cases in which all three averages were obtainable it was found that the one year average was 8.7 per cent higher than the corresponding three year average and the three year average was 6 per cent higher than the five year average. These data afforded a means of determining three and five year averages in cases in which quotations were not sufficient. The calculation of the value of the roads in the second class was by

[15] *State R. R. Cases*, 92 *U. S.*, 605; *R. R. vs. Backus*, 154 *U. S.*, 429; *Adams Express Co. vs. Ohio*, 166 *U. S.*, 185.

the capitalization of income method. It was found that the value of the roads in the first class calculated by the stocks and bonds method was 2.2 per cent less than the value ascertained by capitalizing at 6 per cent their net earnings from operation; therefore the earnings of roads in the second class were capitalized at 3.8 per cent.

On the ad valorem basis and at the average rate on the general property of the state, taking the five year average as a basis, the railroads would have paid in taxes in 1899, $2,516,760.56; on the three year basis, $2,670,940.95; on the one year basis, $2,913,020.56. They paid in license taxes only $1,360,120.14. On the lowest basis they would have paid 92 per cent more taxes than they did pay. The commission did not in 1900 recommend the abandonment of the license tax system, but advised that it be given a further trial with a change in the rates, which they recommended should be from 3 per cent to 5½ per cent. However, they declared that if the gross receipts tax could not be made more nearly equal in its burdens to taxes on property in general they favored an ad valorem tax levied by a State Board and at the average rate of state and local taxes combined.[16]

In 1902 the commission took averages for three, five and seven years preceding December 31, 1901. In the case of bonds held by savings banks, trust companies, and insurance companies and not quoted on the market, comparison was made of the market values stated in the reports of such institutions with the quoted prices of similar bonds, and in every case in which the rate of interest or date of maturity was not precisely the same the lower rate was taken. In this stock and bond calculation the commissioners deducted the value of lands held by the roads but not used in the business and also the value of stocks in other companies, both of which kinds of property were taxed otherwise. The capitalization of earnings method was employed for the 38 roads in the second division. The capitalization method, at 6 per cent, was used also for all the roads. All the calculations were made conservatively. The stock and bonds method

[16] *Report of Tax Commission*, 1901. 95, 96, 101, 104, 111, 162.

taking a seven year average, 1895 to 1901, gave a total value of $217,854,026. The capitalization method, taking the average for eleven years, 1892 to 1902, a period including both panic and prosperous years, gave at 6 per cent, $220,341,950. The average rate of taxation in 1901 was figured out to be 1.28 per cent. Taking the lower valuation of $217,854,026, the railroads would have paid at this rate in 1901, $2,788,531. They paid under the license system $1,600,379. The difference is $1,188,-152.[17]

The figures for 1904 and for 1906, however, indicate that the foregoing calculations were not quite fair to the railroads. The valuation was figured in 1904 to be $218,024,900, which is in accord with the valuations reached in 1902, but the average rate of taxation in 1903 was only a little over 1.14 per cent; in 1905, the rate was a little less than 1.14 per cent and the total valuation was calculated to be $237,239,500. In 1904 the difference between the ad valorem tax and the license tax was only $545,-942; in 1906 it was $645,790. In 1904 the license tax yielded more than the ad valorem tax in the cases of four small roads, and in 1906 in the cases of five small roads.*

Many years prior to 1903, the year of the adoption of ad valorem railroad taxation, it was questioned, as has already been shown, whether the railroads were paying their full share of the taxes levied in the state and figures were adduced showing that they were not. From 1876 to 1899, however, no attempt was made to increase the taxes on the roads. In the latter year a bill was introduced in the legislature to increase the rate to 5 per cent and to abandon classification as Governor Scofield recommended. The bill passed the Assembly but was defeated in the Senate largely, if not entirely, because of the influence of the railroads, which, resisting every step toward a reform in the method or the rate of railroad taxation and at that time thoroughly alarmed, come forward with the proposal that a permanent commission be appointed to investigate the subject of railway taxation, which they said was very complex and required investigation by experts. They urged that during the brief and

[17] Ibid., 1903, 195-204, 216.

*Vide tables at the end of this chapter.

busy term of the legislature, the members, occupied to some extent with their own affairs and responsible for legislation on a large number of subjects, could not give to the subject of railroad taxation the time and attention demanded by its intricate character and great importance. The accredited representatives of the railways declared that they would acquiesce in the findings of such a commission, even if such findings showed that the railroads were not adequately taxed. The commission was provided for and appointed. Thus in 1899 did the railroads prevent legislation to increase their taxes, but what is vastly more important, thus did they pave the way for the adoption of the ad valorem system, to which they were most opposed.

At the beginning of the legislative session of 1901 the Tax Commission made a report to the legislature that seemed to show that if the railroads were taxed on the ad valorem basis at the average rate of taxation on other property in the state they would pay into the state treasury a million dollars more than they were then paying. A half a million was probably correct. By means of a powerful lobby the railroads defeated the bills prepared by the commission and consequently reform was delayed for two years more. The companies prosecuted a protracted and extensive campaign to secure the election of a legislature that would ignore the recommendations of the commission and at the beginning of the session of 1903 they openly made preparations for continuing their fight against increased taxation. Fortunately, however, the opposition of the railroad lobby became diverted in part to a fight against state regulation of services and rates and the ad valorem tax bill became a law.[18] This law of 1903 provides that railroads shall be taxed on the true cash value of their real estate, rights of way, tracks, stations, terminals, appurtenances, rolling stock, equipment, franchises, and personal property used in conducting their business; in short of all their property used in the business of railroad transportation. Real estate not adjoining their tracks, stations or terminals—an amendment of 1905 added grain elevators and coal docks not used exclusively by the railroads in carrying on

[18] Vide *Governor's Message*, 1905, also *Governor's Message*, 1899, 10.

their business—not necessarily used in the operation of their roads are taxed as is the property of individuals. Any other method of taxing such property not an integral part of the roads would contravene the fourteenth amendment to the Constitution of the United States. All other property of railroads is taxed at the average rate of taxation on the general property of the state as nearly as such rate can be ascertained. This rate is obtained by dividing the aggregate tax throughout Wisconsin for state, county, and local purposes levied on the general property of the state, not including special assessments for local improvements, by the aggregate true cash value of the general property of the state upon which taxes are levied. Railroad property used for transportation purposes is exempt from all other taxes, except that it is liable to special assessments for local improvements in cities and villages. The shares of railroad stock held by citizens of the state are exempt. Failure on the part of a railroad company to pay its taxes works a forfeiture of 10 per cent of the taxes due, to be recovered by action in the name of the state and such failure, in theory at least, works a forfeiture of all rights, privileges, and franchises, whether granted by special charter or obtained under general laws. The taxes on a railroad after they become due are a lien on the property of the company, which lien has priority of all other liens, claims or demands, and the state may become the purchaser of the property of a railroad company under a judgment for its sale for unpaid taxes. An amending law of 1905 provides that unpaid railroad taxes shall bear interest at 15 per cent and that a judgment covering taxes and interest shall bear interest at 10 per cent until paid. The Tax Commissioners, who as the State Board of Assessment assess the railroads, have very ample powers of investigation and the companies have abundant opportunity to protest against any injustice that may seem to be being directed against them. Taxation each year is based upon data of the preceding year.

This law of 1903 embodies a very clever expedient to prevent, through litigation upon the part of the railroads, the state's being deprived of revenue from the taxation of such corporations or any one of them. The law provides that rail-

roads should pay in 1905 and 1906, and another amending law of 1905 extended the provision so as to apply up to and including 1909, the old license taxes. If the license tax in any case exceeds the ad valorem tax the difference is refunded to the company; if it is less than the ad valorem tax the company is under legal obligations to pay the difference. At the special legislative session of 1905 it was enacted that no railway company shall hereafter have any right of action or remedy against the state or its officers to set aside the assessment or levy of any tax on such company nor can a railroad company begin action to set aside the railroad tax law until it has paid its taxes, which will be refunded if the law is held void.*

In 1905 several other amending laws were enacted to the end that the administration of the railroad tax might be improved. If the tax on any railroad is adjudged illegal and non-enforcible or is set aside by any state court of competent jurisdiction, the State Board of Assessment shall, whether any part of the tax has been paid or not, re-ascertain the value of the railroads or the value of the general property of the state or the average rate of taxation throughout the state, as may be required, and shall make another assessment which shall be of the same force and effect as the original one. The whole process or any part of it may be repeated as often as is necessary to the determination of the taxes legally due from any company for any year.

In any action or suit brought by a company in the Circuit Court of Dane County to set aside, restrain, or postpone the collection of any tax levied, no injunction or order shall issue to enjoin or restrain the collection of the tax in question, unless the company pays to the state treasurer the amount of the taxes that the Court shall determine primarily to be justly due from such company. A railroad must begin suit within six months after the payment of its tax and such suit must be brought in the Circuit Court of Dane County. No transfer can be made to another court unless both parties consent to it. If the judge

* Since this was written, the law taxing railroads on the ad valorem basis at the average rate on property in general, has been upheld by the Supreme Court of the state. *128 Wis. 553, 108 N. W. 557.*
Vide also *Report of Wisconsin Tax Commission*, 1907, 108 ff.

of the Dane County Court be disqualified, or if a statutory affidavit of prejudice be filed, some other circuit judge shall be called in. Another law of 1905 empowers and directs the Attorney General of the state to begin civil action against any railroad company or person operating a railroad in Wisconsin, who fails to pay to the state all license taxes required by law to be paid.[19]

The writer will conclude this chapter with a discussion of the gross earnings and the ad valorem taxes, including in the discussion the objections of the railroads to the latter tax and also the question of its constitutionality. The one great advantage of the gross receipts tax is its relative simplicity. However, as the controversies between the state and the railroads discussed in the earlier part of this chapter show, its administration is by no means simple. Furthermore, this virtue of relative simplicity is greatly outweighed by many disadvantages, which have reference both to justice between the companies and other tax payers, and between the companies themselves. It is difficult, even impossible, to fix upon a rate such that railroad property will be taxed equally with other property. In practice, under the gross receipts tax, the railroads assess themselves and they enjoy an advantage not enjoyed by others in that their taxes rise and fall with their business. In years of poor business their taxes fall and in consequence thereof the taxes on other classes of property rise. Since a railroad's receipts depend upon its business, its taxes rise and fall in a considerable degree with its ability to pay, with its business, which depends upon general financial conditions, good or poor crops, demand for commodities, upon business conditions in general. However, this advantage enjoyed by railroads taxed under the gross earnings system is in reality not so great as at first sight it appears to be, for the railway business is within certain limits one of increasing returns, hence in most cases its net earnings fall faster than its gross earnings. Notwithstanding, the gross earnings tax has the advantage to the companies of a desirable elasticity, which is a disadvantage to the state, because it has no reference

[19] *Laws of 1903*, ch. 315. *Laws of 1905*, ch. 216, secs. 2, 6, 7, 9; ch. 427; ch. 431, secs 3, 5; ch. 328. *Laws of 1905* (special session), ch. 11.

to the state's needs; in fact the railway tax revenues contract at times when the needs of the state require that they should not. The gross receipts tax works injustice between the roads themselves as well as between the roads and other tax-payers. It is clear that the tax discriminates against railroads having great operating expenses and small profits and favors roads having small expenses and great profits, and it takes no account of different costs of construction. As the tax takes no account of operating expenses, it bears no definite and certain relation to ability to pay, hence the road most able to pay may pay a lower tax than other roads less able. Of course a just system of taxation takes no account of differences when they are due to mismanagement, extravagance or fraud, but it does take into account differences of cost and of operating expenses due to natural disadvantages or to industrial and economic conditions. A just system of taxation is, however, only an ideal. We can never attain to it, but must be content with approximating it as closely as possible. The best possible system of taxation is bound to be faulty and to work some injustice. The difficulties of classification give rise to no little inequality. Under the Wisconsin classification, the Green Bay and Western Railroad would have paid in 1897, $10,000 more in taxes if its earnings had been $8.000 more. Its earnings were less than $35 below $2,000 a mile. If the earnings of the Kewaunee, Green Bay and Western road had been $1,300 more in 1897, its taxes would have been $1,600 more. These illustrations serve to indicate the difficulties of classification.[20] Of course the theoretically ideal tax is the net earnings tax, but the opportunities that it affords for fraud and evasion make it impracticable. A further disadvantage of the gross earnings tax has been pointed out by the Tax Commission and by others. This disadvantage, which is related to public economy, lies in the fact that under the receipts system the railroads, since their taxes are in no way affected by public expenditure, have no interest in keeping down that expenditure. When their taxes are dependent upon public expenditure as under the ad valorem system the railroads may

[20] *Report of Tax Commission*, 1898, 132.

wield great power to the end that extravagance may be prevented instead of log-rolling with legislators who desire certain appropriations. "The general welfare of the people is more likely to be conserved if all taxpayers are directly interested in the fund raised by taxation. The larger the contribution and the more powerful the taxpayer the more potentially can the power be exercised in favor of all that makes for good government."[21]

The strongest objection to the ad valorem tax advanced by the railroads is that they are taxed on intangible elements that are not included in the taxation of any property but that of public service corporations. This is so because the value of their stocks and bonds, which serve as an index of their value is a function of property, of franchise, of good will, and of skill in management. Individuals, manufacturing, mercantile and mining concerns are not taxed on the three intangible elements, franchise, good will, and skill in management, and the railroads may well ask wherein lies the justice of this discrimination. Another argument advanced is that the ad valorem tax is an income tax in the guise of a general property tax, since the value of the railroad as reflected in its stocks and bonds is dependent upon net earnings and net earnings represent profits on labor as well as upon capital. It is notoriously true that property in Wisconsin is assessed at far from its true value, consequently the Tax Commission corrects the valuations taken from the assessment rolls by multiplying such valuations or rather the aggregate valuation by the ratio of true to assessed value as ascertained by property sales and corresponding assessments reported by the registers of deeds in the several counties. The railroads assail this method of correction on the ground that small holdings of real estate are transferred oftener than large properties. The cottages outnumber the mansions, and large properties are assessed at a smaller percentage of their real value than are small properties, hence the ratio of true to assessed value calculated by the Tax Commission is too low. Computations by the Tax Commission of corrected statistics for the years 1895 to 1899 inclusive reported by the registers of deeds show real estate to

[21] *Report of Tax Commission*, 1901, 89.

have been assessed on the average at 43.4 per cent of its real value. The commission sent 12,000 letters to town and county officers, to prominent citizens and property owners asking for information as to the relation between the true and assessed value of real estate. Replies from town and county officers, 2,220 in number, indicated that the percentage was 45.9. Replies from 1,667 selected farmers indicated an average of 48 per cent. Another correspondence investigation resulting in satisfactory replies from 1,124 farmers in 68 out of the 73 counties showed farm lands to be assessed at 38 per cent of their real value. Computations on the basis of sales for five years showed an average for farm lands of 39.5 per cent. The railroads in 1900 made an investigation of the ratio of true to assessed value. Their method was as follows: Persons familiar with real estate values were sent into 16 counties. After consulting real estate men they made a list of about twenty pieces of representative property the value of which they computed by conferring with the owners, their neighbors, and real estate men. The ratio of assessed to true value found was 35.7 per cent. The Tax Commission's ratio for the same counties, computed from reports of sales, was 38 per cent. There can be no doubt that the report of sales method is faulty and because of this fact, the railroads have no inconsiderable argument against the ad valorem tax. Registers of deeds are by no means always accurate nor conscientious in making out their reports and much of the data is misleading.* Many considerations stated in deeds are fictitious and many considerations in cases of trades are placed very high. Of course considerations that are over-stated favor the railroads by making the ratio of true to assessed value higher or the ratio of assessed to true value lower. A satisfactory administration of the ad valorem tax on railroads demands assessment of property in general at its full value, and this can be attained only by having assessments made by state assessors who will be under civil service rules and whose tenure of office will depend upon a thorough, efficient and impartial discharge of their duties.

* This data will henceforth be collected by agents of the Tax Commission. *Laws of 1907*, ch. 522.

Many other objections to the ad valorem system are made, of which two have been disposed of by the Federal Supreme Court in the Michigan ad valorem cases decided in April, 1906.[22] In these cases the court held that no provision of the federal constitution can nullify the action of a state in granting under its constitution legislative functions to the executive or the judiciary, and that generally speaking in the matter of taxation a state has the freedom of a sovereign both as to objects and methods. Furthermore, what is more important in so far as Wisconsin is concerned, since the Wisconsin Constitution unlike the Michigan Constitution does not provide for ad valorem railroad taxation, the ad valorem law does not delegate a legislative function. Apropos of this point Mr. Justice Brewer said, "It may be laid down as a general proposition that where a legislature enacts a specific rule for fixing a rate of taxation by which rule the rate is mathematically deduced from facts and events occurring within the year and created without reference to the matter of the rate, there is no abdication of the legislative function, but, on the contrary, a direct legislative determination of the rate." The railroads in Wisconsin complain that their taxes are determined chiefly by the action of local levying officers,† while the railroad property taxed is largely outside of the jurisdiction of such officers, and that the railroads have no opportunity to appear before these local taxing powers. It is complained further that the tax depends largely upon expenditures for purposes other than governmental. There is, in a sense, some truth in the contention that the tax is determined largely by the State Board of Assessment, since the tax depends in part upon the Board's estimate of the value of the general property of the state. The railroads contend further that the railroad tax is not uniform with taxes for state purposes placed upon other forms of property, and that railroad property is taxed higher than other property in the same jurisdiction.[23] The Wis-

[22] *Chicago Record-Herald*, April 2, 1906.

† Since the rate on railroads is made up of elements determined by local taxing officers.

[23] Peck, George R., Brief in behalf of the Chicago, Milwaukee and St. Paul Railroad, 1903; Bowers, Lloyd W., Brief in behalf of the Chicago and Northwestern Railroad, 1903; *Milwaukee Free Press*, Jan. 10, 1905; *Report of Tax Commission*, 1901, 59, 61.

consin ad valorem law has been upheld in one of the Circuit Courts of the state.[24] It has not yet come before the Supreme Court.

The United States Industrial Commission sums up as follows the advantages of the ad valorem system administered by a state board:

"The duties of assessment are in the main performed by experienced and competent officials thus minimizing the liability of unequal assessments, as between localities and between companies, under a property tax; the popular demand that corporations be taxed on the same basis as individuals is realized; the method is in accord with both state and federal constitutional provisions, besides being reasonably productive and constant in its yield from year to year."[25]

An honest and efficient board is essential to a satisfactory administration of the ad valorem system. Wisconsin is fortunate in having such a board, but the state must effect two reforms before its ad valorem system will harmonize with its general system of taxation. There is required an income tax that will tax intangible elements in business other than that of public service corporations. Besides, property in general must be assessed at its full value. This can be accomplished only through expert assessors depending for continuance in office on honest, efficient service. If the writer is a judge of the tendencies in Wisconsin taxation these two reforms are not far distant.

Up to 1854 railroad property in Wisconsin was taxed locally just as other property. From 1854 to 1903 a gross receipts tax obtained, with a graduated scale from 1876 on. Since 1903 the railroads have been taxed on the ad valorem basis at the average rate of taxation on property in general throughout the state.

The following table is from a Special Report of the Railroad Commissioner, Mar. 23, 1905.

[24] *Madison Democrat*, Nov. 5, 1905.

[25] *Ninth Industrial Report*, 1018. Cited in *Report of Tax Commission*, 1908, 162.

SUMMARY OF IMPROPER DEDUCTIONS ON THE C., M. & ST. P., C. & N. W., C., ST. P., M. & O., ST. P. & S. S. & M. W. C., G. B. & W., K., G. B. & W., D., S. S. & A., N. & N. P. Rys.

	Before 1897.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	Totals.
AMOUNTS WRONGFULLY DEDUCTED FROM GROSS EARNINGS BEFORE REPORTED FOR TAXES:									
Commission and repayments to shippers on freight traffic	$83,957 29	$351,621 42	$617,704 25	$770,314 84	$814,665 38	$1,006,259 05	$958,437 52	$714,232 62	$5,077,192 97
Commission and repayments on passenger tickets	14,958 32	99,275 98	134,497 07	158,509 99	133,974 95	110,877 09	149,973 08	70,605 27	872,661 70
Expense of operating hotels					1,310 39			290 57	1,600 96
Expense of operating sleeping cars	3,804 48	1,311 23	1,701 06	1,693 07	1,507 02	1,627 80	2,088 65		13,728 91
AMOUNTS NOT REPORTED FOR TAXES THAT ARE A PART OF GROSS EARNINGS:									
Car mileage—Credit balance		42,607 98	94,224 45	113,268 52	147,183 95	169,593 27	140,127 26	271,095 26	977,300 79
Switching charges collected		211,879 86	253,404 99	344,599 88	292,430 94	276,951 99	281,679 94	236,024 32	1,996,341 22
Storage, demurrage and misc		1,538 50	5,009 00	4,949 55	3,851 15	18,851 82	55,968 29	75,256 79	165,304 09
Rental of tracks and terminals		89,941 88	91,104 69	101,111 18	97,379 60	98,297 95	91,601 48	83,966 68	645,803 31
Totals	$102,720 09	$798,266 83	$1,197,695 51	$1,494,446 03	$1,499,303 94	$1,734,739 47	$1,419,880 46	$1,499,351 55	$9,739,983 96

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ABSTRACT OF VALUATION AND ASSESSMENT OF THE PROPERTIES OF ALL RAILROADS IN WISCONSIN FOR THE YEAR 1906, AND TAXES LEVIED THEREON FOR SAID YEAR BY THE STATE BOARD OF ASSESSMENT.

Name of Company.	Valuation.	Tax at .0113819066	License fee in 1906.	Balance or amount of taxes payable.	Balance to be refunded.
Abbotsford & N. E. R. R. Co.	$80,000	$910 55	$961 34		$50 79
Ahnapee & West. Ry. Co.	195,000	2,219 47	479 09	$1,740 38	
Bayfield, Harb. & Gr. West. R. R. Co.	9,500	108 12	30 00	78 12	
Bayfield, Sup., & Mpls., Ry. Co.	4,000	45 52		45 52	
Bayfield Trans., Ry. Co.	9,500	108 12	19 30	88 82	
Big Falls Ry. Co.	25,000	284 54	105 00	179 54	
Chi., & Lake Sup. Ry. Co.	4,500	51 21	25 55	25 66	
Chi., & N. W. Ry. Co.	76,500,000	870,715 85	670,540 93	200,174 92	
Chi., Burl. & Quincy Ry. Co.	9,700,000	110,404 49	107,011 56	3,392 93	
Chi., Harv. & G. L. Ry. Co.	22,000	250 40	357 63		107 20
Chi., L. Shore & E. Ry. Co.	360,000	4,097 48	3,628 38	469 10	
Chi., Mil. & St. P. Ry. Co.	75,800,000	862,748 52	627,275 13	235,473 39	
Chi., St. P. M. & O. Ry. Co.	24,700,000	281,133 09	223,479 82	57,653 27	
Chip. Riv. & N. Ry. Co.	36,000	409 74	125 00	284 74	
Chip. V. & N. Ry. Co.	23,000	261 78	72 50	189 28	
Davis, John R. Lbr. Co.	48,000	546 33	102 50	443 83	
Drummond & S. W. Ry. Co.	45,000	512 18	91 45	420 73	
Duluth, S. S. & Atlantic Ry. Co.	1,300,000	14,796 47	10,814 97	3,981 50	
Dunbar & Wausaukee Ry. Co.	65,000	739 82	116 10	623 72	
Fairchild & N. E. Ry. Co.	110,000	1,252 00	165 00	1,087 00	
Great Northern Ry. Co.	7,200,000	81,949 72	45,375 44	36,574 28	
Green Bay & W. R. R. Co.	1,850,000	21,056 52	20,423 20	633 32	
Hawthorne, Neb. & Sup. Ry. Co.	65,000	739 82	249 07	490 75	
Hazelhurst & S. E. Ry. Co.	25,000	284 54	680 70		396 16
Hillsboro & N. E. Ry. Co.	11,000	125 20	326 05		200 85
Illinois Central R. R. Co.	1,000,000	11,381 90	456 55	10,925 35	
Iola & Northern R. R. Co.	8,500	96 74	23 50	73 24	
Kewaunee, Green Bay & W. R. R. Co.	395,000	4,495 85	4,415 52	80 33	
La Crosse & S. E. Ry. Co.	320,000	3,642 21	211 15	3,431 06	
Lake Sup. T. & T. Ry. Co.	330,000	3,756 02	81 65	3,674 37	
Laona & Northern Ry. Co.	25,000	284 54	65 00	219 54	
Marathon Co. Ry. Co.	33,000	375 60	77 50	298 10	
Marinette, Tom. & W. Ry. Co.	110,000	1,252 00	218 85	1,033 15	
Mattoon Ry. Co.	60,000	682 91	146 80	536 11	
Mineral Point & N. Ry. Co.	265,000	3,016 20	153 00	2,863 20	

ABSTRACT OF VALUATION AND ASSESSMENT OF THE PROPERTIES OF ALL RAILROADS IN WISCONSIN FOR THE YEAR 1906, AND TAXES LEVIED THEREON FOR SAID YEAR BY THE STATE BOARD OF ASSESSMENT—Continued.

Name of Company.	Valuation.	Tax at 0113819066.	Licence fee in 1905.	Balance or amount of taxes payable.	Balance to be refunded.
Mpls., St. P. & Ash. Ry. Co.	112,000	1,274 77	202 50	1,073 27	
Mpls., St. P. & S. S. Marie Ry. Co.	9,600,000	109,266 30	76,124 42	33,141 88	
Northern Pacific Ry. Co.	3,160,000	35,966 82	22,618 18	13,348 64	
N. W. Coal Ry. Co.	77,500	882 09	592 46	289 63	
Oshkosh Transp. Co.	75,000	853 64	337 83	515 81	
Robbins R. R. Co.	46,000	523 56	140 00	383 56	
Stanley, Merrill & Phillips Ry. Co.	115,000	1,308 91	3,840 09		2,531 18
Sup. & S. E. Ry. Co.	10,000	113 81	108 05	5.76	
Whitcomb & Morris Ry. Co.	10,000	113 81	30 00	83 81	
Winona Bridge Ry. Co.	150,000	1,707 28	267 39	1,439 89	
Wis. & Mich. Ry. Co.	250,000	2,845 47	1,433 26	1,413 21	
Wis. Central Ry. Co.	22,300,000	253,816 51	233,475 06	20,341 45	
Wis. Western R. R.	600,000	6,829 14	259 85	6,569 29	
Total	$237,239,500	$2,700,337 56	$2,057,733 24	$645,790 43	$2,280 31

CHAPTER X

TAXATION OF OTHER PUBLIC SERVICE CORPORATIONS

I. Taxation of Telegraph and Telephone Companies

The first corporation tax in Wisconsin was a per mile of wire tax on telegraph companies. In 1848, at the last session of the legislature of the Territory of Wisconsin a law was enacted providing that in lieu of all other taxes telegraph companies should pay an annual tax of twenty-five cents per mile of line.[1] The constitutionality of this method of taxing telegraph companies has never been decided upon in the Wisconsin Courts, but the Federal Supreme Court has decided that such a tax constitutes no interference with interstate commerce. The court has held that states may not impose taxes on the business of a telegraph company engaged in transmitting messages between different states, but that they may levy a per mile of wire tax in lieu of all other taxes. Such a tax is a tax on property and constitutes no interference with interstate commerce.[2]

In 1867 the telegraph tax was increased to fifty cents a mile, and in 1868 to one dollar. The companies were not at all scrupulous about making reports of their miles of line and hence in 1873 it was provided that failure to make the report required and to pay the tax should work a forfeiture to the state of $500, to be recovered by suit.[3] Up to 1878 the per mile of wire tax was in lieu of all other taxes, but in that year it was made in lieu of all other taxes except those on real estate.[4] In the years

[1] *Laws of Wisconsin Territory*, 1848, 258.
[2] Cooley, *On Taxation* (third ed.), I, 160.
[3] *Laws of 1867*, ch. 160. *Laws of 1868*, ch. 141. *Laws of 1873*, ch. 228.
[4] *Revised Statutes*, 1878, ch. 48, sec. 1038, art. 15.

1874 and 1875 Governor Taylor remonstrated against the low taxes levied on telegraph companies, which paid into the State Treasury in 1874 only $2,346. The Secretary of State in 1872 recommended a gross earnings tax and also a percentage penalty for delinquency, 1 per cent for the first month of delinquency, 2 per cent for the second, and 3 per cent for each succeeding month.[5] The Secretary in 1874 urged heavier taxes on telegraph companies and also on express companies.[6] In the same year Governor Taylor declared that there was no reason why such companies, which enjoyed the protection of the state, earned large dividends, and excluded the citizens of the state from carrying on like enterprises, should not bear a full proportion of the burdens of the government. The next year he dwelt at greater length upon the subject, declaring that the partiality of the legislature of 1874 to express and telegraph companies was a just cause for complaint. The Governor regarded the taxes on these companies and on sleeping car companies as merely nominal and indeed they were hardly more than such. Other corporations in a large measure remunerated the state for the protection that they enjoyed. Every farm house, workshop, factory, and foundry paid tribute somewhat in accordance with its productive power, but express and telegraph companies were exempt from amenability to this rule. The practical exemption of these companies and of sleeping car and freight line companies as well was not in accord with the theory upon which past corporation tax legislation was based, namely, that the exercise of any valuable franchise within the state implied an obligation to share the burdens as well as the blessings of state government, nor was it in accord with any other principle of just taxation. The Governor would have been nearer the truth if he had said that it was not in accord with the principle upon which past corporation tax legislation should have been based. Nevertheless, he was undoubtedly right in his contention that the companies indicated above were not paying their just taxes.[7]

[5] *Secretary of State's Report*, 1872, 35.
[6] Ibid., 1874, 43.
[7] *Governor's Message*, 1874, 7; Ibid., 1875, 8-9.

In 1882 the taxes on telegraph companies were increased by the substitution of wire for line and the introduction of a graduated scale. It was provided that every person, company, or corporation doing a telegraph business in Wisconsin should pay per mile for the first wire one dollar, for the second fifty cents, for the third twenty-five cents, and for the fourth and all additional wires twenty cents each.[8]

This graduated per mile of wire tax obtained until 1905, when provision was made for taxing telegraph companies on the ad valorem basis. The State Tax Commission in 1900 attempted to determine the difference between the taxes paid by the companies and the taxes that they would pay under the ad valorem system, also as to whether their earning capacity justified the application of that system. By both the stocks and bonds and the capitalization of earnings methods of determining the value of corporate property, it was made plain that the Western Union Telegraph Company was paying less in taxes than it would pay under the ad valorem system. It was decided also that the earning capacity of the company justified the application to it of that system. This company paid the state in 1899, $10,424. On the basis of a five year's average of its stocks and bonds it would have paid about $12,700. On the average value of its stocks and bonds for 1899, it would have paid about $15,000. The commission was unable to reach any satisfactory conclusions with respect to the Postal Telegraph Company because of the failure of that company to make a report to the commission of stock and bond values and earnings. The commission recommended, however, the application of the ad valorem system to the Postal Company as well as to the Western Union.[9]

Because of political conditions and the relative unimportance of telegraph taxation no change was made, however, until 1905, when it was enacted that telegraph companies shall be taxed on their property, which is defined by the law as all franchises, rights of way, poles, wires, cables, devices, appliances, instruments, and all other real and personal property used by the companies in the carrying on of their business. The rate is

[8] *Laws of 1882*, ch. 320, sec. 4.
[9] *Report of Tax Commission*, 1901, 115-119, 164.

the average rate on the general property of the state. The first assessment under this law is to be begun in 1906 and finished in 1907 and is to be known as the assessment of 1907. Consequently the first levy of the ad valorem tax on telegraph companies is to be made in 1907. The companies are required to furnish the State Board of Assessment, the Tax Commission, with complete statistics of their property and business. The stocks of the companies in the hands of individuals are exempt from taxation and the state tax on the companies is in lieu of all other taxes except local taxes on their real estate. Justice demands that the state tax be in lieu of all other taxes as in the case of railroads.[10]

The first telephone tax was provided for in 1883, when a law was enacted requiring all persons, companies, associations, or corporations doing a telephone business in the state to pay a license tax annually of one per cent of their gross receipts from business done within the state. This license tax was in lieu of all other taxes except those on real estate owned by telephone companies, but in no way connected with or used in the carrying on of the telephone business. Neglect to file a statement of gross receipts before the tenth of February in each year or failure to pay the tax worked a forfeiture of $5,000 to be recovered by suit and such neglect or failure constituted a cause of forfeiture of all rights, privileges, and franchises under which the business was carried on, whether granted by special charter or obtained under general laws or existing by comity in foreign corporations.[11]

Since 1883 there have been many changes in the rate and the graduated principle has been introduced. In 1885 the rate was made 1½ per cent; in 1891, 2¼ per cent; and in 1897 a graduated scale was adopted. If the gross receipts were less than $100,000 a year, the rate was 2¼ per cent, the general rate of 1891; if they exceeded $100,000 the rate was 3 per cent.[12] In 1900 the Tax Commission made an investigation to determine whether the telephone companies were paying their just taxes.

[10] *Laws of 1905*, ch. 494.
[11] *Laws of 1883*, ch. 345.
[12] *Laws of 1885*, ch. 337. *Laws of 1891*, ch. 166. *Laws of 1897*, ch. 309.

Of the 100 companies, 50, including all the important ones, reported to the commission respecting the value of their stocks and bonds. On the ad valorem basis determined by taking the average value of their stocks and bonds for 1899, these 50 companies would have paid in taxes to the state in that year, $31,100; taking a three year average they would have paid, $29,134; taking a five year average they would have paid $27,373. The 100 companies paid only $17,315. The Commission recommended, however, not an ad valorem tax, but an increase in the rate. They recommended a scale of rates from 3 per cent to 5 per cent.[13] A law of 1905 provides for the higher rates of 2½ and 4 per cent. This law provides also for a division of telephone taxes between the state and local communities. To the city, town, or village in which the exchange is located goes 85 per cent of the tax on gross receipts from exchange or local business. The remaining 15 per cent goes to the state. All of the tax from toll or long-distance business goes to the state. Unpaid taxes draw interest at the rate of 15 per cent, and taxes and interest constitute a lien on the company's property.[14] In 1905 Governor La Follette recommended the assessment of telephone companies by the State Board of Assessment and on the ad valorem basis, but he was in doubt as to whether the average rate of taxation should be applied.

The gross receipts tax on telephone companies has been declared valid by the State Supreme Court in the case of the *Wisconsin Telephone Company vs. Oshkosh.* The city of Oshkosh attempted to exact of the telephone company a license fee of $300 for the privilege of using its streets and alleys. The Court held that such a fee could not be charged without express legislative authority, as the state tax is in lieu of all other taxes.[15]

In 1887 the telephone tax law was made applicable to telegraph companies operating "wholly in the state or in one or two counties," provided that they charged no more than 25 cents for a message of 25 words and not more than one cent

[13] *Report of Tax Commission*, 1901, 119, 164.
[14] *Laws of 1905*, ch. 488.
[15] 62 *Wis.*, 32.

for each additional word.[16] The phrase "wholly in the state or in one or two counties" is not very clear, but it is the evident intention of the law to extend the low telephone tax to local telegraphs.

II. Taxation of Street Railways and Electric Lighting Companies

Street Railways were first subjected to a special method of taxation in 1895, by a law providing that on or before February 1, 1896, and on or before the same day in each succeeding year, street railway companies should pay to the treasurer of the city, village or other corporate unit in which they operated a certain percentage of their gross receipts for the preceding year. On the first $250,000 or fraction thereof the rate was 1 per cent; on the next $250,000 or fraction thereof the rate was 1½ per cent; if the receipts were over $500,000 the rate on the excess was 2 per cent. This tax was divided between village, city or town, county and state in the following proportions; 91 per cent to the village, city or town, 6 per cent to the county, and 3 per cent to the state. In case a railway operated in more than one corporate unit the 91 per cent was divided on a mileage basis, but if a railway had most of its track in a city but projected into neighboring towns and villages the division was on a mileage basis with the modification* that the city should receive "three portions of such tax for every mile to every one portion received by the neighboring town or village."[17]

A law of 1897 pertaining exclusively to street railways operated by mechanical power and also to companies or corporations

[16] *Laws of 1887*, ch. 232.

* The shares going to city and neighboring towns may be determined by the following formulae:

the city's share equals $\frac{3a\,T}{3a+b}$

the town's share equals $\frac{b\,T}{3a+b}$

a = number of miles in the city.
b = number of miles in the town.
T = amount of the tax.

[17] *Laws of 1895*, ch. 363.

furnishing electric light or power introduced a new classification on the basis of gross earnings. Taxes under this law were due December 15. Companies whose gross receipts equalled or exceeded $800,000 a year paid 3 per cent on $800,000 and 4 per cent on any excess. Companies whose receipts were less than $800.000 paid as follows: 1½ per cent on the first $250,000, 2½ per cent on receipts in excess of $250,000. The distribution of the tax between cities and villages or towns remained as provided for in the law of 1895; 91 per cent of the total tax still went to the municipality or municipalities; 3 per cent to the county and 6 per cent to the state. The earlier law gave 6 per cent to the county and 3 per cent to the state. These license taxes were in lieu of all other taxes that might be levied on the property necessarily connected with the power plant or the railway system. The Supreme Court of the State decided in this same year that the law of 1895 clearly exempted street railways from paying local assessments and it is reasonable to infer that the law of 1897 did also.[18]

Two years later, in 1899, the classification was changed and the graduation within classes was discontinued. Companies whose gross receipts equalled or exceeded $500,000 a year were taxed at the rate of 4 per cent; all other companies at the rate of 2 per cent. The rapid extension of interurban railways suggested that perhaps a larger percentage of the electric railway tax should be paid into the State Treasury; the law of 1899 provided, therefore, that only 88 per cent of the tax should go to the municipality, 3 per cent to the county and 9 per cent to the state. This law declares that no electric light and power company not operated in connection with or forming a part of an electric railway system should be longer taxed as street railway companies, but should be subject to the general tax laws of the state.[19]

A law of 1905 placed all roads having an income of $400,000 or over in the first class and made the rate on them 5 per cent; the rate on the second class roads was raised to 2½ per cent.[20]

[18] *Laws of 1897*, ch. 223; *Milwaukee R. and L. Co. vs. City of Milwaukee and another, 95 Wis.*, 42.
[19] *Laws of 1899*, ch 354.
[20] *Laws of 1905*, ch. 437.

It should be noted that the observance of the license tax law respecting electric railways was so far from perfect that it seemed desirable if not necessary to provide in 1899 that failure to file a verified statement of gross receipts should make each of the general officers of a delinquent company liable to a fine of not to exceed $1,000 or imprisonment for not to exceed six months or both.[21]

In the case of the *Merrill Railway and Light Company vs. the City of Merrill* the Supreme Court in 1903 handed down a decision that is of great importance in taxation. With Justice Marshall dissenting, the Court held that land leased by the railway company and necessarily used in its business was "owned" within the meaning of the statute and was therefore exempt from general taxation. Justice Marshall held that the land was not "owned" since if the company were taxed by the general method the land would not be taxed to it, but to the owner.[22]

The gross receipts tax on street railways in Wisconsin has given way to the ad valorem tax and direct control by the state. In its report of 1901 the State Tax Commission made a strong argument for state control and for an apportionment of a large part if not all of the tax to the state. Control by the state was highly desirable because the electric railway was spreading out over the state and problems of rates and fares were bound to arise in the near future. The electric railway was even then assuming a character and importance that demanded state control and for that reason alone it seemed just and expedient that a large part if not all of the taxes on electric railways should go into the state treasury. The further argument was advanced that wisdom and expediency dictated that the state should have sources of revenue sufficient to relieve it of the necessity of levying taxes on the counties, which levy promotes a struggle among the counties to escape paying more than their individual shares of the state tax or to escape as much as possible of such tax, a struggle which tends to increase undervaluation. The commission was of the opinion that this strife led to increased difficulty of finding intangible personalty.

[21] *Laws of 1899*, ch. 354, sec. 1.
[22] *119 Wis.*, 249.

However, as such personalty is held mostly in cities, where the state tax is but a small part of the total tax, the writer does not believe that this strife increases the difficulty of discovering such property. Notwithstanding, as the commission said, making the state independent of the counties in the matter of revenue does advance tax reform.[23]

In this same year it was made evident that the street railways were not paying their full share of the taxes. A stock and bond computation having to do with 16 out of the 19 companies showed that on the basis of a five year average of their stocks and bonds these 16 companies would on the ad valorem basis have paid in taxes in 1899, $150,000; taking a three year average, $160,000; taking the average for 1899, $175,000. They paid in 1899 only $104,677. The commission did not, however, recommend the application of the ad valorem system, but recommended license taxes on both street railway and electric light and power companies at rates from 3 per cent to 5 per cent.[24]

In his message of 1905 Governor La Follette recommended that the electric railway and electric lighting companies be taxed on the ad valorem basis, as under the gross receipts law they did not pay their just portion of the taxes levied in the state. The total tax paid by such companies in 1904 was $140,792.72, of which $124,175.44 was paid by companies operating in Milwaukee County. Only one company, the Milwaukee Electric Railway and Lighting Company, paid 4 per cent. The gross receipts of the Milwaukee Light, Heat and Traction Company were reported as $452,930, hence it paid only 2 per cent, but it is owned by the former company. The property of these two companies was estimated to be worth at least $23,500,000, which seems to be a fair estimate, as the value of their stocks and bonds on December 31, 1903, was $23,539,500 and their reported earnings for 1903 of $1,576,801 capitalized at 6 per cent equal $26,280,016. Their taxes accordingly at the average rate of all taxes, .0114403568, would have been in 1904 $268,000. All the companies in Milwaukee County paid only

[23] *Report of Tax Commission*, 1901, 75.
[24] *Report of Tax Commission*, 1901, 114, 163.

$124,175. At the average rates for the cities in which they operate they would have paid very much more than twice as much as under the gross receipts system. The Governor recommended that the property of such companies be assessed by the State Board of Assessment, but that they be taxed locally at local rates. He contended that it would be unjust and unwise to deprive local communities of taxes on such property, which is largely local in its character, and unjust to tax it at the average rate for the state, as the rates in the cities where the greater part of such property is situated are much higher than the average rate.[25]

The legislature of 1905 enacted a law making electric railway and electric lighting companies subject to the ad valorem system and at the average rate of taxation. The companies are to be taxed on their property, which the law defines as all franchises, rights of way, road-beds, tracks, stations, terminals, rolling stock, equipment and all other real and personal property used in the operation of the railway or in the conduct of its business. The taxes thus levied by the state are to be in lieu of all other taxes except local assessments in cities and villages. The state is to retain 15 per cent of the tax, and the remainder is to be distributed among the towns, cities and villages in which the lines are operated and in proportion to the gross receipts in each in the preceding year. The first assessment under this law is to be made in 1908.[26]

III. Taxation of Express, Sleeping and Palace Car, Freight Line and Equipment Companies

Up to 1899 express companies paid in Wisconsin only local taxes on their few horses and wagons and other property, although over thirty years before the attention of the legislature was called to the fact that the state received no revenue from these companies, which were doing a large and lucrative business in Wisconsin, and it was suggested that such companies be re-

[25] *Governor's Message*, 1905.
[26] *Laws of 1905*, ch. 493.

quired to pay a license tax to compensate for the protection afforded them by the state laws.[27] Again in 1874, Governor Taylor declared that there was no reason why such companies, enjoying the protection of the state, earning large dividends and excluding citizens of Wisconsin from carrying on similar enterprises, should not bear a full proportion of the burdens of government. The legislature, however, took no action and in his next message the Governor declared that the partiality of that body to the express companies and the telegraph companies constituted a just cause for censure and complaint.[28] The legislature of 1899, however, was alive to its duty respecting the taxation of express and similar companies. The law of that year respecting the former provides that they shall be taxed at the average rate of taxation as in the case of railroad companies, and that their taxable value shall be determined each year by the State Board of Assessment in the following manner: from the actual money value of a company's capital stock shall be deducted the value of its real estate situated outside of the state and also the value of all its personal property not used in the express business; the result thus obtained shall be divided by the total number of miles of railroad, stage, water and other routes over which the company does business; this operation gives the value per mile, which value is multiplied by the mileage in Wisconsin, excluding, however, the mileage over navigable waters of the United States in Wisconsin; this final result is the taxable value taken.* The tax thus levied is in lieu of all other taxes. In case an express company fails to report the value of its stocks, its mileage, etc., to the State Treasurer, the tax is levied on the basis of the best information ob-

[27] *Secretary of State's Report*, 1866, 43.

[28] *Governor's Message*, 1874, 7; Ibid., 1875, 8.

*The basis and rate may be expressed thus:

$$\text{Basis equals } \frac{\text{(actual value of capital stock)} - \text{Value of real property outside of state} + \text{personal property not used in express business.}}{\text{total mileage}} \times \text{Mileage in Wisconsin, excluding mileage over navigable waters of U. S. in Wisconsin.}$$

$$\text{Rate equals } \frac{\text{(total taxes on general property of state)} \times 100}{\text{value of general property of the state}}$$

tainable and a penalty of 10 per cent is added to the tax. If a company refuses to pay its tax it becomes the duty of the Attorney-General to proceed by suit to collect the tax, a 10 per cent penalty and the costs of the action. A law of 1905 provides that in assessing express, sleeping car, freight line and equipment companies doing business outside as well as within the state, the Board of Assessment shall take into consideration the value of the entire system, of that part within the state, the earning capacity of the entire system, of that part within the state, the entire mileage and the mileage within the state. Water, coastwise and ocean mileage may be excluded. This law modifies the purely per mileage method, by introducing into the process of determining the value the factor of earning capacity within and without the state. Unpaid taxes draw interest at the rate of 15 per cent, which interest is in lieu of the 10 per cent penalty prescribed by the law of 1899.[29]

In 1883 the Governor in his message observed that sleeping cars were running on nearly all roads of any size in the state and that on most of the lines they were owned by companies other than the railroad companies, which sleeping car companies, wealthy, money-making corporations, made no reports of their earnings and paid no revenue to the state.[30] The legislature taking cognizance of this condition provided for the taxation of not only sleeping car companies but also of palace and drawing-room car companies. The law enacted provided for an annual license tax of 2 per cent of gross earnings. In 1885 the rate was increased to 4 per cent. The companies were required to make to the Railroad Commissioner before February 10th each year statements of their gross earnings in Wisconsin in the year preceding. One-half of the tax was due when the license was applied for; the other half on or before August 10. Companies failing to comply with the law were to be restrained, on petition of the Attorney-General, from doing business in the state. The law did not apply to railroad companies operating such cars in Wisconsin.[31]

[29] *Laws of 1899*, ch. 111. *Laws of 1905*, ch. 477.
[30] *Governor's Message*, 1883, 17.
[31] *Laws of 1883*, ch. 353. *Laws of 1885*, ch. 415.

Almost immediately the question arose as to whether the law imposed a tax on receipts from passengers carried from without the state to points within the state, or from within the state to points outside, or through the state. The companies maintained that it did not, that it taxed only receipts from passengers getting on and getting off in Wisconsin. It was asserted that a tax on other receipts would amount to an interference with inter-state commerce. The matter came before the State Supreme Court in 1885 in the case of the *State vs. Pullman Palace Car Co. and another.*[32] This suit was begun because of the companies' interpretation outlined above. The Attorney-General maintained that the state might stipulate the terms upon which any company chartered in another state might do business in Wisconsin, that it might even exclude such a company altogether. A majority of the Court upheld the contention of the companies. The first clause of the law reads, "No owners . . . shall have a right to use or charge or collect fare or compensation for the use of any such car within the State until such owner shall have procured from the State Treasurer a license to use such cars within this State as hereinafter provided." The construction of the law turned on the section that required owners of such cars to make "a true statement of the gross earnings made by the use of such cars *between points within the State of Wisconsin, etc.*" The Court held that it could not have been the intention of the legislature, in view of the words *between points within the State,* to require reports of earnings from traffic originating outside of the state and ending in the state or vice versa, or from traffic passing through or across the state. It was pointed out that the language used in the law under consideration was not the general language employed in the law requiring reports from railroads. While admitting that it might be regarded as absurd to construe the law as referring only to earnings from traffic between points within the state, the Court affirmed that there were three sufficient objections to any other construction; first, so liberal a construction in favor of the state as that urged by

[32] *64 Wis.,* 89.

the Attorney-General was not permissible; second, because of the commerce clause in the federal Constitution there was grave question as to the power of the Wisconsin legislature to impose a license tax upon persons or companies upon the basis of their earnings from the transportation of passengers into, out of and across the state, in cases in which the persons or companies were not residents of the state and had no taxable property in the state; the third objection was declared to lie in the history of the act itself. The legislative journals for 1883 show that two bills relating to licenses for such companies were introduced. The House bill, which was number 89, provided for a tax on Wisconsin's per mileage share of all gross earnings. The original Senate bill, which was number 65, provided for a tax upon the gross earnings made by the companies upon the railroads within the state. The bill passed, as an amendment of the Senate bill, provided for a tax upon gross earnings made by such cars *between points within the state,* instead of gross earnings made in the state.

Justice Cassoday, now Chief Justice, in his dissenting opinion held that the opinion of the majority of the Court fell before the first and sixth sections of the act. The first section forbade the *use* of such cars within the state unless the license therefor had been procured. The phrase *between points within the state* he maintained had reference to earnings made by the use of cars within the state. The law was certainly worded in an unfortunate way and there is much to be said for both decisions but justice certainly demanded the minority one.[32]

This decision cut down the receipts from this tax to a very low figure. In 1885 only $240 was received. It is pretty clear that the lobbyists of these companies did very skillful work in bringing about the passage of this act rather than either of those originally introduced. Of course the companies desired to escape all taxation and evaded in so far as they could even the limited tax prescribed by the Supreme Court. It was their practice to a considerable extent to give a traveler asking for a sleeping car ticket for between two points within the state a ticket to some point beyond his destination and outside of the

[32] *64 Wis.*, 89.

state. The legislature of 1897 provided for the adequate taxation of these companies but the acts were vetoed by the Governor on the ground that they were not passed in the manner prescribed by the Constitution.[34]

In 1899, however, a new law was enacted applying not only to sleeping car companies but also to dining, buffet, chair, parlor and palace car companies. The law taxing these companies is identical with that taxing express companies, except that the value only of real estate owned by a company outside of Wisconsin is subtracted from the value of the capital stock.[35] In that year also the same method of taxation was made applicable to freight line companies and to equipment companies, which the law defines as "any person or joint stock company, partnership, association or corporation whose principal business is the furnishing or leasing of any kind of railroad cars to common carriers or to shippers, except sleeping cars, to be used on a line wholly or partly in the state."[36] We have already noticed how a law of 1905 modified this per mileage system of taxation, concerning the validity of which system there can be no doubt, as it has been upheld by the Supreme Court of the United States in the case of the *Pullman Car Co. vs. Pennsylvania*.[37]

[34] *Report of Tax Commission*, 1898, 139-140.
[35] *Laws of 1899*, ch. 112.
[36] *Laws of 1899*, chs. 113, 114, 149, 277.
[37] *141 U. S.*, 18 (cited in *Report of Tax Commission*, 1898, 140.)

CHAPTER XI

TAXATION OF BANKS, INSURANCE COMPANIES, ETC.

I. Bank Taxation

In the Territorial period there was no bank tax; in the first four years after Wisconsin became a state there were no banks in that commonwealth, but on the second of November, 1852 the people by a vote of 32,826 to 8,711 expressed their approval of state banks and the bank act passed by the legislature the preceding spring became a law. The Constitution provided that no banking act should become a law until approved by the people. This law authorizing banking provided for a semi-annual tax of ¾ of 1 per cent on capital stock. Failure to pay the tax within twenty days after the first of January and the first of July each year worked a forfeiture of 1 per cent of the capital stock of the delinquent bank. The unpaid tax and the forfeit constituted a lien on the interest on the securities deposited with the State Treasurer to secure the note circulation of the bank. If the interest was not sufficient to pay the tax the Treasurer was to collect the balance by action of debt. The real property of the banks was taxed as other real property was, but share-holders were not taxed on their shares.[1]

This tax on capital stock and hence on the state banks rather than on their stockholders obtained until 1866 when with the approval of the people expressed by a vote of 49,714 to 19,151,* a law was enacted which brought the taxation of the state banks into accord with that of national banks. This new law provided for a tax not on banks but on the stockholders, on the face

[1] *Laws of 1852*, ch. 479, sec. 16.
* *Wisconsin State Journal*, Dec. 22, 1866.

value of their stocks, to be levied at the situs of the bank. Banks were required to keep in their offices lists of the names of stockholders, their residences and the number of shares held by each, which lists were to be open to the inspection of the tax assessors during business hours on every business day. The tax remained a lien on the stock until paid, and it applied to both national and state banks. A law of 1865 provided that when state banks became national banks they should continue to pay the tax on capital stock until 80 per cent of their notes had been retired.[2]

The creation of national banks made necesary in 1865 some provision for their taxation. Before taking up the state legislation on this subject it will be well to notice how the state is restricted by federal law. The National Bank Act of February 25, 1863 gave free rein to the states in the matter of the taxation of the banks to be chartered by the federal government, but the mandatory act of June 3, 1864 imposed the following limitations:

(1) the tax was to be on the shares of the stockholders, which shares were to be included in the personal property of the holders; but taxed at the situs of the bank;

(2) the tax on national bank shares was not to be higher than on other moneys in the hands of individual citizens;

(3) the tax was not to exceed that on the shares of state banks. The act provided also that the states need not exempt the real estate of the banks and that the latter might be required to keep in their offices for the inspection of assessors lists of their stockholders and the residences of the same.

The act as amended in 1868 did not include the prohibition that the shares in national banks be not taxed higher than shares in state banks, but this change was of practically no significance since the prohibition relating to other moneyed capital remained in force. The significant change wrought by the amendment of 1868 was that relating to the time and place of the levy. This amendment allowed the state legislatures to determine the time and place of the levy except that the shares of non-residents must be taxed at the situs of the bank.[3]

[2] *Laws of 1866*, ch. 102; *Laws of 1865*, ch. 489, sec. 3.

[3] *12 statutes, C. 58*, 665; *13 statutes, C. 106*, 99; cited in Judson, *On Taxation* (St. Louis, 1903), 297-299.

Before a return is made to our discussion of Wisconsin bank taxation, note should be taken of the decisions of the federal Supreme Court respecting national bank taxation. In case of the *Owensboro National Bank vs. Owensboro* the Court decided that the power of the states to tax national banks is limited to such method of taxation as Congress by express authorization permits.[4] Notwithstanding that a tax on the shareholder and not on the bank is authorized, the Court in the case of the *National Bank vs. Commonwealth* (of Kentucky) upheld a provision for compelling the bank to pay the tax for its shareholders, and in another case it was decided that where the bank has been made liable for the taxes on its shareholders the state may force payment by distraint of the bank's property. In a Pennsylvania case the Court held that a state's making a national bank agent for the collection of the taxes of its shareholders is a mere matter of procedure and constitutes no discrimination even if state banks in that state are not compelled to act as agents for the collection of taxes on their shareholders.[5]

The Wisconsin law of 1865 relating to the taxation of national banks provided for an annual tax of 1½ per cent on the *par value* of stocks. The law required banking associations to furnish to the assessors lists of their stockholders and the residences of the same and a statement of the amount of stock held by each. If such lists were not furnished by November 1, the assessors were authorized to examine the books and papers of the delinquent association. The owners of shares in national banks were obliged, whether living within or without the state, to pay to the State Treasurer before December 31, a tax of 1½ per cent on the par value of their shares, which tax constituted a lien on such shares until paid. The lien extended from the first of the preceding July. If the tax remained unpaid until February 1, it then became the duty of the State Treasurer to sell at auction the stock of the delinquent. Such sales were to take place not less than four nor more than eight weeks after

[4] *173 U. S.* 664; Other cases bearing on the question are *Davis vs. Elmira Savings Bank, 161 U. S.* 276, and *McCullough vs. Maryland, 4 Wheaton* 8, 297, 638, 690; all cited in Judson.

[5] *9 Wall,* 353. *First National Bank of Omaha vs. Douglas County, 3 Dillon,* 330. *Merchants' Bank vs. Penn., 167 U. S.* 461; cited in Judson, 304, 305.

the first notice of the same was published. However, at any time prior to December 1, a bank might pay the taxes of its stockholders and if it did so prior to November 1, a list of stockholders was not required. If the tax was not paid either by the stockholder or the bank before December 1, a penalty of 1 per cent was imposed. This penalty and the costs of advertising were to be paid out of the proceeds of the sale of the stocks. It was provided that whenever the rate of taxation on other moneyed capital should fall below 1½ per cent, the State Treasurer should reduce the bank stock rate to an equality with the rate on other moneyed capital. The real estate of national banks was taxed just as other real estate.

This law of 1865 did not work at all satisfactorily and consequently in 1867 was begun the enactment of a series of laws providing for pains and penalties that would enforce compliance with the law. A law of 1868 gave assessors full inquisitorial powers. Any person who when summoned by a justice of the peace or county judge, at the instance of an assessor, refused to be sworn or to answer questions pertaining to the value of bank stocks was to be punished by a fine of from $200 to $1,000. Assessors or collectors failing or refusing to carry out their part of the law were made punishable by a fine of from $1,000 to $2,000 or by imprisonment for from six months to one year. Presidents or cashiers of banks refusing to give assessors information were punishable by a fine of from $2,000 to $5,000. Provision was made also whereby any stockholder in a national bank might test the validity of the national bank tax law by beginning suit for the recovery of his tax, in the Supreme Court of the state.[6]

The validity of the law was established in 1869 in the case of *Van Slyke vs. the State.* The plaintiff, citing the forty-first section of the National Banking Act, "Provided further, that the tax so imposed under the laws of any state upon the shares of associations organized by this act shall not exceed the rate imposed upon shares in any of the banks organized under authority of the state where such association is located," maintained

[6] *Laws of 1868*, ch. 136.

that national banks could not be taxed on their shares when state banks were taxed on their capital stock, and that therefore the national bank taxes for the years 1865 and 1866 were invalid. The state contended that the tax of 1½ per cent on the capital stock of state banks was exactly equivalent to the tax of 1½ per cent on the shares of the national banks at par, unless that part of the stock of the state banks consisting of United States securities were exempt, but such part was not exempt because the tax on the state banks was only a royalty for the grant of their franchise. The Court sustained the state.[7]

The same year, 1869, it was provided that upon presentation to the proper bank of the certificates of sale issued by the State Treasurer, the bank stock purchased from that officer was to be transferred on the books of the bank to the person holding the certificate. Banks were given unrestricted authority to pay taxes for their stockholders and in case they did were to have a lien on the stock. The banks were ordered to retain out of dividends payable to stockholders the delinquent taxes for 1865 and 1866 and to pay the same to the State Treasurer. These were the taxes that the state attempted to levy on the national banks before the taxation of state banks was brought into harmony with that of federal banks. Any bank officer failing to retain such taxes out of dividends became personally responsible for the taxes, which were to be recovered from him by suit. The State Treasurer was again authorized to proceed to sell such share or shares as might be necessary to the payment of the delinquent taxes with interest from the time when they were so returned, at 12 per cent together with the costs and expenses of the sale.[8] In 1870 and in 1872 additional laws to compel payment of the unpaid national bank taxes of 1865 and 1866 were enacted. The law of 1872 proved effective. Soon after its passage the amount delinquent, $45,177.87, was paid into the State Treasury.[9] This law, entitled an "Act to facilitate a settlement with National Banks for taxes due for the years 1865 and 1866," was effective because it made concessions

[7] *23 Wis.* 655.
[8] *Laws of 1869*, ch. 167.
[9] *Governor's Message*, 1873, 8.

to the banks that were hardly more than fair. In the first place the law revoked all penalties for the non-payment of the taxes in question by providing that if within fifteen days after the passage of the act any delinquent national bank paid its taxes for the years 1865 and 1866 the treasurer of the state should execute a receipt in full. Taxes for 1865 were to be computed upon the capital stock of each bank organized before June 1, of that year and not afterward.* Shares representing an increase of capital stock and issued after June 1, were not to be taxed for that year. The same rule applied to taxes for 1866. If a state bank had become a national bank between January 1, and June 1, in either of the years it was to be taxed for that year as a national bank at a proportion of the full rate equal to the ratio of the remainder of the year to the whole year. Banks taking advantage of this law were permitted to take the amount of the tax out of the dividends to become due their stockholders and to charge interest at the rate of 10 per cent on the amount of the tax advanced.[10]

It has been shown that the law of 1866 provided for a tax of 1½ per cent on the value of both state and national bank stocks. In 1868 as a part of a general assessment law having in view a better administration of the tax laws it was provided that on demand of the assessors the president, cashier, or other officer in charge of an incorporated bank should give to the assessors before June 1, a list of its stockholders, their residences, the amount of stock held by each on the first of May preceding, also the "true value" of the stock of the bank on May 1, and the highest and lowest prices at bona-fide sales of the stock the preceding year. If the assessor considered the valuation given too low he was to indicate at the foot of the statement what he believed to be the true value. If the officer in charge of the bank refused to make out and deliver to the assessor the list indicated above, he became personally responsible for the tax and the town or city treasurer was in duty bound to sue for the same. The following oath was required of every bank officer making a statement,

*Taxes were levied June 1.

[10] *Laws of 1872*, ch. 23 (approved Feb. 28).

"I, ..., do solemnly swear that I am, of [name of bank], that the annexed is a true statement of the names of all the stockholders in said bank on the first of May A. D. 18.., and of the amount of stock then held by each of them, and of the highest and lowest *bona-fide sale* of any of said stock during the preceding year known to me, and that the value set down in said statement is the true value thereof, such as I verily believe any stockholder desiring to sell would be willing to accept in full payment."[11]

The bank tax law now in force was enacted in 1903 and amended in 1905. The shares of stock of every bank, state, national or private, are taxable to the shareholders at their true cash value and at the rate on other personal property in the taxing district. The tax is levied at the situs of the bank and constitutes a lien on the shares until paid. If the tax is not paid the officer having authority to collect the same may sell the shares of the delinquents or such part of the shares as will yield a sum sufficient to satisfy the tax. A bank may pay the taxes levied on its stockholders and if it does so it has a lien on the shares for the amount of the tax together with interest on the same and the expenses connected with the payment. A bank may pay such taxes out of earnings or other available resources. In case a bank owns the building that it occupies the assessed value thereof together with the assessed value of the land on which it stands, if owned by the bank, is deducted from the true cash value of the shares and the value of each share for assessment purposes is obtained by dividing the result by the number of shares.[12] The Tax Commission recommended in 1901 that the taxation of surplus invested in real estate be abolished, as the value of such property enters into the value of the shares. Taxing such value in the real estate and in the shares also constitutes double taxation.[13] The capital of private banks is assessable as personal property to the several owners. The law defines a private bank as any person, co-partnership or corporation not organized as a banking as-

[11] *Laws of 1868*, ch. 110. This law applied also to unorganized banks.
[12] *Laws of 1903*, ch. 72; *Laws of 1905*, ch. 302.
[13] *Report of Tax Commission*, 1901, 124.

sociation that advertises as a bank or is engaged in banking business or receives funds on deposit or for safe keeping or buys and sells exchange as a regular business. The last law enacted on the subject of bank taxation declares that the taxes provided for in the law noted above are in lieu of all taxes on capital, surpluses, properties and assets of banks, except that no real estate owned by banks shall be exempt.[14]

As almost everywhere else, if not everywhere else, in Wisconsin banks are paying and have paid relatively high taxes. In 1862 the Governor of the State, while protesting against the lowness of the tax on railroads, expressed a firmly held belief that the bank tax was sufficiently burdensome, as in many cases the real capital of a bank was much less than its nominal capital on which banks were then taxed. Representatives of the national banks showed to the satisfaction of the Tax Commission of 1867 that, as property in general was assessed at only one-third to one-half of its real value, the owners of bank stock were paying on such property a tax 50 per cent to 100 per cent higher than the taxes on other property.[15] Statistics gathered by the Tax Commission in 1902 show both that the banks are taxed relatively high and that there were great increases in 1900 and 1901. The ratios of assessed to par value in 1899, 1900, and 1901 were respectively 77.81 per cent, 80.8 per cent, and 98.94 per cent. The ratios of assessed value to capital and surplus were 63.73 per cent, 64.58 per cent, 79.29 per cent; the ratios of assessed value to capital, surplus and undivided profits were 58.56 per cent 59 per cent and 71.32 per cent.[16] It is evident that the banks relatively speaking are taxed very high in Wisconsin.

II. Taxation of Insurance Companies, Loan and Trust Companies, Building and Loan Associations

In Wisconsin the tax on insurance companies has always been and is now a receipts tax. At first, taxation was directed against foreign companies only. A law of 1859 provided that

[14] *Laws of 1905*, ch. 302.
[15] *Report of Tax Commission*, 1867, 10; *Governor's Message*, 1862, 17.
[16] *Report of Tax Commission*, 1903, 221.

every foreign life insurance company doing business in Wisconsin should pay annually a license tax of 3 per cent of the premiums received in the state in the year preceding. Every company that had not been doing business in the state prior to the time when it applied for its license was obliged to pay for the first year $500. The rate was changed to 2 per cent in 1861, but was again made 3 per cent in 1862.[17] The Supreme Court of the state has upheld the tax on foreign insurance companies as a payment for a license precedent to doing business in the state. In the case of the *State ex rel. Drake vs. Doyle,* Chief Justice Ryan said, "Save by voluntary license of the state, the insurance company has no right to carry on business within the state. . . . Authorizing such license out of its mere discretion it was competent for the legislature to impose any conditions, reasonable or unreasonable, and to provide for revocation upon any cause or no cause, in any manner that it may see fit." In two other cases the Court has expressed substantially the same opinion.[18]

It was provided in 1867 that life insurance companies organized in Wisconsin should pay an annual tax of 1 per cent of all cash receipts in the state. This tax was in lieu of all other taxes, but in 1869 was made in lieu of all other taxes except those on real estate.[19] Three years later a law for the regulation of life, and life and accident insurance companies provided that such companies should pay an annual license fee or tax of $300. Companies organized under the laws of Wisconsin were obliged to pay in addition a tax of 1 per cent on all premiums received in the state in the preceding year. This tax on domestic companies was increased to 2 per cent in 1878 and in 1887 the law of 1870 as amended in 1878 was made applicable to live-stock insurance companies. This receipts tax was in lieu of all other taxes except taxes on real estate. In 1882 in-

[17] *General Laws 1859*, ch. 190, sec. 5.

[18] *40 Wis.* 175; *Lewis vs. American S. and L. Assoc., 98 Wis.* 203; *Traveler's Insurance Company vs. Fricke, 99 Wis.* 367.

[19] *Laws of 1867*, ch. 158, sec. 5; *Laws of 1869*, ch. 181; a law of 1858 provided that no one should be allowed to carry on insurance business in Wisconsin unless he had a certificate from the governor that his company had complied with the insurance laws, for which certificate $3.00 is to be paid to the governor.

surance companies organized for charitable and benevolent purposes and not for profit were exempted from fees and taxes.[20]

A new law affecting life insurance companies was enacted in 1899 and is now in force except as amended in 1901. This law provided that life insurance companies organized under the laws of the state, with the exception of purely assessment companies and stipulated premium plan companies, should pay annually a license tax of 1 per cent of their gross income from all sources except United States bonds and real estate. The amendment of 1901 raised the rate to 3 per cent, but exempted premiums collected outside of the state from non-residents; however, this amendment provides that dividends paid to policy holders should not be deducted from premiums. By the law of 1899 companies organized outside of the state were required to pay a tax of 1 per cent of all premiums and premium notes received from citizens of Wisconsin, and no deduction of dividends was permitted. Assessment companies, except fraternal organizations were required to pay an annual tax of $300. The amendment of 1901 provides that foreign companies shall pay $300 if the 1 per cent method does not yield $300. Failure to pay insurance taxes when due works a forfeiture of 15 per cent of the tax, recoverable along with the tax by suit. The law of 1899 was retroactive as it applied to companies that had already taken out licenses at a lower rate for the year March 1899 to March 1900.[21] By a law of 1907 domestic companies pay a tax of 3 per cent on income in Wisconsin less income from tax-paying real estate.*

Wisconsin legislation respecting life insurance companies has since 1870 discriminated against home companies. The leniency of the state toward foreign companies is due probably to a fear of retaliation by other states. The law of 1901 provided for a tax of 3 per cent on domestic companies. The tax on foreign companies was made 1 per cent. or a minimum of $300, to be

[20] *Laws of 1870*, ch. 59, sec. 27; *Laws of 1878*, ch. 256; *Laws of 1887*, ch. 309; *Laws of 1882*, ch. 281; accident companies doing business on the mutual assessment plan paid the same fee and taxes as other accident companies. *Laws of 1887*, ch. 503.

[21] *Laws of 1899*, ch. 326; *Laws of 1901*, ch. 21.

* *Laws of 1907*, ch. 656.

increased in the case of any foreign company whose home state should discriminate against Wisconsin companies. Of the premiums collected in Wisconsin in 1903, domestic companies collected 27.9 per cent; foreign companies, 72.1 per cent. Of the taxes paid, domestic companies paid 84 per cent; foreign companies, 16 per cent. Granting that the amount of premiums collected is not the best basis of taxation, since a company with very large assets may collect a relatively small amount in premiums, let us see what statistics respecting the investment element in policies reveal. All policies have on equity in the assets of the company that issues them. This equity for each state may be determined by finding the ratio of the company's insurance liabilities in the state to its total insurance liability. By this method the cash value of the policies of citizens of Wisconsin in the old line companies was found to be approximately $40,000,000, of which 35 per cent is in domestic companies and 65 per cent, in foreign companies. Under the law of 1901, one domestic company paid in 1903 taxes equivalent to a tax of 1.6 per cent on the cash value of its policies in the state; while some of the foreign companies paid a tax of less than 1-10 of 1 per cent. The injustice of the present Wisconsin method of taxing life insurance companies is apparent. A just tax on such companies would not discriminate between domestic and foreign companies and it would be a tax on the equity of the policies in the assets of the companies. Such a tax levies upon both reserves and surpluses;* it is equivalent to taxation of the policies on the basis of their investment value in the hands of the policy holders. To avoid double taxation the value of real estate owned by a company should be deducted from its gross assets; also the value of its United States bonds. Such a method would tax equally all policy holders in the state, would remove the in-

*In 1898 the Tax Commission urged that life insurance companies be taxed on their surpluses, and in reply to the argument that such a tax would increase the rate of insurance or diminish the dividends of policy holders it was pointed out that policies often represent property of great value to their holders and that there is no reason why such property should be exempt. Furthermore, it was very properly contended that accumulated surpluses are often in excess of the demands of safety to the policy holder and that such capital competes with capital subject to much heavier taxation. *Report of Tax Commission*, 1898, 151.

centive to insure with a foreign company rather than with a domestic one, and in Wisconsin would increase the revenue of the state. In 1904 the life insurance companies paid the state $330,464. It has been estimated that at the average rate of taxation and on the equity in assets basis they would pay about $400,000. If the average rate is too high a lower one might be charged, as in Massachusetts where an excise tax of ¼ of 1 per cent on the cash value of policies is levied.[22]

The Revised Statutes of 1858 provided that every foreign fire insurance company doing business in any city or village in which there was a regularly organized fire department should pay to that department on the first of February in each year 2 per cent of the premiums collected in that city or village in the preceding calendar year. In 1851 a similar law had been enacted with reference to the city of Kenosha. Similar instances are probably to be found in the local laws. In 1878 this provision was made applicable to companies organized in the state.[23] This local tax of 2 per cent was resisted on the ground that it violated the constitutional rule of uniformity, but in 1862 in the case of the *Fire Department of Milwaukee vs. Helfenstein* the Supreme Court of the state held this 2 per cent payment was not a tax but a fee pertaining to the exercise of the police power of the state, and hence was not in contravention of the rule of uniform taxation.[24] By a law of 1907, fire insurance companies are required to pay a tax of ¼ of 1 per cent of gross premiums and assessment receipts in Wisconsin for the purpose of maintaining the department of State Fire Marshal. When the condition of this fund warrants it, part or all of this tax is to be omitted.*

The law of 1870 providing for the incorporation of Fire and Inland Navigation Companies prescribed an annual license tax of 2 per cent of total gross receipts within the state. Home companies were, however, permitted to subtract office expenditures and office salaries from their gross receipts. This 2 per

[22] *Governor's Message* 1905, 17-20.
[23] *Revised Statutes* 1858, ch. 65, sec. 1; *Laws of 1878*, ch. 303.
[24] *16 Wis.*, 136.
* *Laws of 1907*, ch. 228.

cent tax was in lieu of all other taxes except those on real estate. This law did not prohibit cities and villages from collecting the 2 per cent fire department tax. Agents of companies were obliged, under penalty of forfeiting $100, to execute bonds to the fire departments to secure the payment of this tax.[25]

Accident and bonding insurance companies were in 1880 declared subject to the same fees and taxes as fire insurance companies; and foreign hail insurance companies, as foreign fire insurance companies, but the hail insurance law was repealed in 1899.[26]

The law respecting the 2 per cent payment by fire insurance companies was not well observed, consequently in 1887 a law was enacted providing that the commissioner of insurance should, if the tax from any company remained due for thirty days after notification to pay had been given, upon complaint supported by satisfactory proof, revoke and cancel the license of the delinquent company. A unique feature of this law was that property owners having insurance in any company not licensed were liable to the fire department of their city or village for 2 per cent of their insurance premiums to be recovered by civil action.[27]

The law relating to the taxation of fire and inland navigation insurance companies was changed in 1905. Such companies, except town, church, druggists', lumber dealers', hardware dealers', and city and village mutual insurance companies organized under the laws of the state, are required to pay on January 1, of each year a tax of 4 per cent of the amount of gross premiums received in the year preceding, provided, however, that from the amount of such gross income may be deducted the amount paid by the company for the reinsurance of risks in the state and the amount of return premiums and actual losses less reinsurance losses paid in the preceding year. The payment of this tax licenses for one year the company paying it.[28]

The laws governing fire insurance companies were made ap-

[25] *General Laws 1870*, ch. 56, secs. 33, 34.
[26] *Laws of 1880*, ch. 105.
[27] *Laws of 1887*, ch. 486.
[28] *Laws of 1905*, ch. 325.

plicable, in 1885, to foreign surety companies, that is they were taxed 2 per cent of their receipts in Wisconsin. A law was enacted in 1901 authorizing the transaction of marine insurance in the state upon the principle commonly known as the Lloyds. Corporations or companies transacting such business are obliged to pay an annual tax of 2 per cent of the premiums received the preceding year and also certain fees.[29]

It was provided in 1897 that casualty insurance companies, suretyship companies, and companies insuring live-stock or bicycles should pay a license tax of 2 per cent of their premiums in the state. In 1899 it was enacted that casualty insurance companies organized on the mutual plan should pay an annual fee of $25 on filing their annual statement with the commissioner of insurance and also an annual license tax of 2 per cent of gross receipts from premiums.[30]

A law was enacted in 1891 providing that trust, annuity, guaranty, safe deposit, and security companies should pay on annual license tax or fee of $300 and in addition 2 per cent of their net income in the preceding calendar year. These taxes were in lieu of all other taxes except taxes on real estate. In 1905 the taxes were made $500 and 3 per cent. There was but one vote in the Assembly against this increase.[31] An increase had been recommended by the Tax Commission of 1898, which observed that complaint was made that loan and trust companies bore a very light tax. The companies maintained that their business was restricted and that they had no such opportunities for making money as have banks. On the other side it was contended that such companies lend large sums on bonds and mortgages and act in direct competition with banks. The commission, while seeing considerable force in the plea of the companies, yet recommended an increase in the tax.[32]

All mutual investment, trust, and guaranty companies are exempt from taxation on their capital stock, securities taken for moneys advanced to their members, and installments paid.[33]

[29] *Laws of 1885*, ch. 443; *Laws of 1901*, ch. 249.
[30] *Laws of 1897*, ch. 277; *Laws of 1899*, ch. 65.
[31] *Laws of 1891*, ch. 263, sec. 10; *Laws of 1905*, ch. 442.
[32] *Report of Tax Commission*, 1898, 147.
[33] *Laws of 1897*, ch. 380, sec. 1038, pars. 24, 31, 32; *Laws of 1899*, ch. 216.

CHAPTER XII

INHERITANCE TAXES

The history of inheritance taxation in Wisconsin may perhaps be said to date from the year 1868, when it was enacted that in counties in which the county judge did not have civil jurisdiction, executors, administrators or guardians should pay into the county treasury sums varying with the value of the estate probated. The taxes or fees were as follows:

On estates of over $1,000 in value and not over $2,000, a tax of	$00
On estates of over 2,000 in value and not over 5,000, a tax of	30
On estates of over 5,000 in value and not over 8,000, a tax of	40
On estates of over 8,000 in value and not over 10,000, a tax of	50
On estates of over 10,000 in value, a tax of	75

It may of course be argued that these payments were only probate fees. The law of 1868 was repealed in 1872, but in 1877 the same schedule was adopted for estates probated in Milwaukee County. In 1889, however, the law of 1877 was repealed and it was provided that in counties having a population of over 150,000, of which Milwaukee was the only one, executors etc., should make the following payments to the county treasurers: on all estates inventoried and appraised at $500,000 or between 3,000 and 500,000, 1-2 of 1 per cent; on all excess over $500,000, 1-10 of 1 per cent. The amount of specific liens was to be deducted in arriving at the taxable value. The year after its passage the Supreme Court of the state in the *State ex. rel. Sanderson vs. Mann* declared the law of 1889 unconstitutional. The amounts of the payments provided for by the law precluded their being fees for probation. They were taxes. The law could not be sustained under the constitutional clause providing for a tax on all civil suits commenced or prosecuted in municipal, inferior, or circuit courts, because the settlement of estates in courts of

probate is essentially proceedings *in rem* and not civil suits "commenced and prosecuted" within the meaning of the constitution. The court in this case did not express an opinion as to whether a succession or inheritance tax would be valid in Wisconsin, but it held that the tax in question could not be valid, since it was a tax on the whole estate at its appraised value regardless of whether it was solvent or insolvent, and furthermore it was in violation of the constitutional provision prohibiting special or private laws, for it applied only to Milwaukee County and only to a certain class of estates in that county. Justice Taylor dissented, holding that the payment was not a tax and saying that if it were he should not be certain that it was unconstitutional.[1]

The taxes provided for by the laws of 1868 and 1877 bore very heavily on small estates. An estate of $1,100 paid a tax of 1 9-11 per cent; those of $1,500, 1 1-3 per cent; of $2,000, 1 per cent; of $15,000, 1-5 of 1 per cent; of $50,000, 3-20 of 1 per cent. The law of 1889 likewise provided regressive rates and it is to be criticized also because the tax was payable upon the return of the inventory and appraisal to the court, before any steps could be taken legally to convert any of the property of the deceased into money or use could be made of any of the funds left by the deceased. These earlier laws did apply throughout the state and the payments required by them were very much like probate fees.

In 1899 an inheritance tax law was enacted to offset in so far as possible the evasion of the personal property tax. This law provided that in certain cases a tax be imposed upon the transfer by will or by the intestate laws of the state of personal property worth $10,000 or more or any interest therein or income therefrom in trust or otherwise to any person, legal or natural, except religious, charitable or educational organizations that were to use the property received for the purposes for which they had been organized. The following were the circumstances under which such a tax was to be levied:

1. When the transfer was by will or by the intestate laws of

[1] *Laws of 1868*, ch. 121; *Laws of 1872*, ch. 40; *Laws of 1877*, ch. 98; *Laws of 1889*, ch. 176; *76 Wis.* 469.

Wisconsin from any person dying possessed of personal property while a resident of the state;

2. When the transfer was by will or intestate law of personal property within the state and from a decedent who was not a resident at the time of his death;

3. When personal property was transferred by a resident or by a non-resident whose property transferred was within the state, through a bargain, sale, or gift made in contemplation of the death of the vendor or donor and to become effective at or after his death;

4. The tax was to be imposed when any corporation became beneficially entitled, in possession or expectancy, to any personal property or the income thereof by any such transfer either before or after the enactment of the inheritance tax law;

5. When any person or corporation exercised a power of appointment derived from any disposition of property made either before or after the enactment of the law, such appointment was regarded by the law as tantamount to a taxable transfer. This fifth provision was added to by an amendment of 1901. The rates were graduated according to the degree of relationship of the beneficiary to the decedent. When the transfer was to a father, mother, husband, wife, child, brother, sister, the wife or widow of a son, or the husband of a daughter, or to any child or children legally adopted, or to any person to whom the donor had stood for at least ten years preceding his death in the mutually acknowledged relation of parent—the safeguard was added in 1901 that the relationship must have begun before the child's fifteenth birthday—or to any lineal descendent of the donor born in lawful wedlock—the amendment of 1901 added, or any lineal descendent of any lawfully adopted child, or any lineal descendent of a brother or sister,— the rate was 1 per cent. In all other cases it was 5 per cent. The tax was computed on the clear market value of the property transferred and became due at the time of transfer except in cases in which a future contingency was necessary to the determination of the true value of the property or in which the transfer was conditioned, in which cases the tax became due when the beneficiary came into actual possession. A deduction of debts from the value of the

property was allowed. A discount of 5 per cent was allowed and deducted from the tax if the tax was paid within six months after it became due—within one year by the law of 1901. If the tax was not paid within eighteen months interest at the rate of 10 per cent, was charged from the time when it became due. If necessary litigation was responsible for the delay only 6 per cent was charged and in any case if a bond was given to insure payment only 6 per cent was charged. From the appraised value of the property there was to be deducted a fair valuation on all the property transferred and taxable under the inheritance tax law upon which the donor or intestate had paid a personal property tax the preceding year. It was the manifest purpose of this law to offset, in so far as possible, evasions of the personal property tax.

In the case of the transfer of any shares of the capital stock of any corporation that owned real estate, the proportionate market value of its real estate taxed as such was deducted from the appraised value of the shares transferred. This provision was changed by the amending law of 1901 so that the deduction was made of the assessed value of the real estate of corporations organized under the laws of the state and engaged in the business of buying, owning, or selling real estate.

It was stated expressly in section 19 of the law that the words "property" and "estate" as used therein meant the personal property of the testator or intestate and not the shares of the same received by individual beneficiaries. Accordingly an inheritance of $5,000 from a personal property estate of $9,000 paid no tax, while the same inheritance from an estate of $10,000 paid a tax, even though the two beneficiaries stood in the same relation to their respective donors or intestates. Therein lay the great weakness in the law, as will be pointed out. This law applied to all personal property within or without Wisconsin over which the state has taxing jurisdiction.

County treasurers were allowed to retain for the use of their counties 15 per cent of the tax; the remainder less costs of collection went into the State Treasury.[2]

The inheritance tax law of 1899 came to a test before the

[2] *Laws of 1899*, ch. 355; *Laws of 1901*, ch. 245.

Supreme Court of the State in 1902 in the case of *Black vs The State*. The plaintiff contended that the law was in violation of the state rule of uniformity and of that clause of the fourteenth amendment to the Constitution of the United States that guarantees equal protection of the laws. It was conceded that a succession tax is constitutional in Wisconsin and that a classification on the basis of degrees of relationship, or relationship and no relationship is permissible, but it was correctly maintained that the constitutions of the state and the nation demand that all within a given class be treated alike. A law that does not meet this demand is discriminating and arbitrary and hence invalid. The inheritance tax law of 1899 was such a law, since it levied a tax on the whole estate and not on the respective amounts received by the beneficiaries.

In handing down its decision the Court observed that the federal Supreme Court had pronounced an inheritance tax one not on property but on succession to property.[3] It was declared to be immaterial whether this law of 1899 violated the rule of uniformity, as it was clearly invalid because in contravention of the fourteenth amendment, since it treated differently persons of the same class. For example, a person receiving $1,000 or $5,000 from a $9,000 estate paid no tax; while one receiving $1,000 from a $10,000 estate paid a tax, even though the two persons stood in the same relation to their respective donors or testators. The Court seemed inclined to believe that an inheritance law might properly come under the general taxation clause of the constitution and that classsifications between lineal and collateral relatives does not violate the rule of uniformity, and that a reasonable exemption of small estates is within the law. It was quite decided in its opinion that such a law when bearing equally upon all persons within the same class is within the equal protection of the laws clause of the fourteenth amendment. The law of 1899 was condemned because it operated differently as to persons of the same class and hence was in contravention of the fourteenth amendment.[4]

It might have been unfortunate for the cause of tax reform

[3] *Magoon vs. Illinois T. and S. Bank, 170 U. S.* 283.
[4] *113 Wis.* 205.

that the Court did not hold decisively that an inheritance tax is within the rule of uniformity. Its decision that such a tax is not one on property but on the succession to property may be sound law, but unfortunately it left the way open for the contention that therefore such a law is in violation of that part of the taxation clause of the constitution that provides that taxes shall be upon property, which has been very strictly construed by the Court. However, in 1906, the Court upheld an inheritance tax as a succession tax. This decision, which is of far-reaching importance, is discussed later in this chapter.

With respect to inheritance taxes some other decisions, quite in accord with the Wisconsin decision of 1902, may well be noted. In the case of the *State ex rel. Schwartz vs. Ferris*, the Ohio Supreme Court decided that progressive rates according to the values of estates were in conflict with the state constitutional provision that government is instituted for the equal benefit and protection of the people. In Missouri a tax similar to the Wisconsin tax was declared invalid because it violated the constitutional provision that taxation shall be "uniform upon the same class of subjects within the territorial limits of the authority levying the tax." The Supreme Court of the United States held valid the Illinois law providing for discriminating progressive rates graduated according to degree of relationship and amounts inherited. The Court declared that the fourteenth amendment requires merely that all persons shall be treated alike under like circumstances and in like conditions both in the matter of privileges granted and liabilities imposed.[5]

The present Wisconsin inheritance tax law was enacted in 1903. It provides for a tax in certain cases upon the transfer of both real and personal property or any interest therein or any income therefrom in trust or otherwise to any person, association or corporation, except corporations organized under the laws of Wisconsin solely for religious, charitable, or educational purposes, provided that the property transferred to such corporations is to be used exclusively for the purposes for which they were organized. An amending law of 1905 exempts transfers

[5] Vide Judson, *Taxation*, chapter on Equality and Uniformity in Inheritance Taxation.

to counties, towns or municipal corporations within the state of property to be used exclusively for county, town, or municipal purposes.

A tax is laid on all transfers to take place after the death of the grantor or vendor or made in expectancy of his death or resulting from the operation of the intestate laws of the state of all property, real or personal, with certain exemptions, to be explained, as well as total exemption in the cases in which the beneficiary is a religious, charitable, educational or public corporation and the property is to be used for corporate purposes.

The following exemptions are made, property to the value of $10,000 when transferred to the widow of the decedent, of $2,000 when transferred to the husband, lineal issue, lineal ancestor of the decedent or any child lawfully adopted, or any child to whom the decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of parent, provided that such relationship had begun at or before the child's fifteenth birthday and had been continuous for ten years thereafter, or to any lineal issue of such adopted or acknowledged child. In cases of such transfers the rate is 1 per cent on the value of the property over and above the exempted value, when the value of the property received does not exceed $25,000. On all in excess of $25,000 the rate is a graduated multiple of the primary rate of 1 per cent, as will be explained fully later. Property of the clear value of $500 is exempt when transferred to a brother, sister, a descendent of a brother or sister of the decedent, the wife or widow of a son, or to the husband of a daughter. In the case of such transfers when not in excess of $25,000 the rate is 1½ per cent. Property to the value of $250 is exempt when transferred to an aunt or an uncle or to the descendents of the same. In such cases the primary rate is 3 per cent. Property to the value of $150 is exempt when the transfer is to the brother or sister of a grandfather or grandmother of the decedent. Here the primary rate is 4 per cent. Property to the value of $100 is exempt when the transfer is to persons of any other degree of consanguinity than those mentioned above or to strangers or

to a body politic or corporate. The rate in such cases is 5 per cent.

The rates indicated above are called primary rates and apply to transfers of $25,000 or less. The rates on values in excess of $25,000 are as follows: on all in excess of $25,000 up to a total value of $50,000, 1½ times the primary rate; on all in excess of $50,000 up to $100,000, twice the primary rate; on all in excess of $100,000 up to $500,000, 2½ times the primary rate; on all in excess of $500,000, three times the primary rate.

Thus the tax is progressive and is graduated with reference both to degree of relationship and the amount received by the beneficiary. It is stated expressly in section 24 of the law that the words "estate" and "property" are used to designate the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to the individual legatee, devisee, heir, next of kin, grantee, donee, vendee or successor, and includes all personal property within or without the state, provided of course in the latter case the testator or intestate is a resident of the state.

The provisions as to the time when the tax is due and the conditions of payment are the same as in the law of 1899 as amended by the law of 1901. The county retains each year 5 per cent of the first $50,000 collected; 3 per cent of the next $50,000; and 2 per cent of all additional; the remainder goes to the state.[6] The state receipts from July 1, 1904, to January 1, 1905, were $26,403.84. The state receipts for the fiscal year ending June 30, 1906, were $103,954.74.

Neither the law of 1899 nor that of 1903 has been well administered. Many county judges have questioned the constitutionality of the law and consequently, as a prominent county judge observed to the writer, the law has not been well administered because of a lack of zeal for its administration upon the part of many a county judge. Furthermore, local authorities are prone to look with indulgence upon under-valuations of property inherited by their neighbors. However, a better administration of the law may be expected in the future, as the

[6] *Laws of 1903*, chs. 44, 249; *Laws of 1905*, ch. 96.

Supreme Court of the State has just pronounced the inheritance tax law constitutional.

This decision was reached in the case of *Nunnemacher as trustee, etc., vs. the State of Wisconsin,* which was finally passed upon June 21, 1906. On three grounds the plaintiff in this case maintained that the inheritance tax was unconstitutional:

(1) The right to take property by inheritance or by will is a natural right protected by the Constitution, which cannot be wholly taken away or substantially impaired by the legislature;

(2) The Constitution of this state limits the power of taxation to property only, while the inheritance tax is an excise levied upon a right or privilege and hence unconstitutional;

(3) Even if the legislature has power under the Constitution to levy such a tax, this law is in violation of the constitutional rule of uniformity.

As to the first argument of the plaintiff, a majority of the Court, in acknowledged opposition to the decisions of all other courts, took the remarkable and self-contradictory view that while legislatures may prescribe lines of descent, may determine what persons may receive as heirs or devisees, and may include or exclude collateral relatives, yet inheritance rights are natural, inherent rights, and are not as other courts have held purely statutory rights. It is clear that the learned Court confuses property with possession. However, the Court held that the general principle of inheritance taxation may be justified under the power of reasonable regulation and taxation of transfers of property. The second contention against the law was that since the only taxation clause in the Constitution prescribes that "taxes shall be levied upon such property as the legislature shall prescribe" by the rule of *expressio unus est exclusio alterius* the Constitution forbids the levy of any taxes except on property, whereas the inheritance tax is an excise on the right to receive property. The Court, declaring the gross receipts tax on railroads and all other special forms of taxation to be license and not property taxes, held that the Constitutional clause in question governed the taxation of property alone and was not intended to prohibit the taxation of privileges or occupations. The Court interpreted the clause as if it read, "The rule of tax-

ation shall be uniform upon such property as the legislature shall prescribe." Consequently an inheritance tax treating all of a class in the same way is valid. According to the Court the clause "taxes shall be upon such property as the legislature shall prescribe," means merely that the legislature may determine what property shall be taxed and what exempted. As to the third point in the plaintiff's argument the Court held that the rule of uniformity when applied to excise taxes means merely that there shall be no unjust classification, and that the inheritance tax law neither in providing different rates according to relationship to the deceased nor according to the size of the legacy works unjust classification. Thus the Wisconsin inheritance tax law has been upheld by the Supreme Court of the State as an excise.

There were two dissenting opinions. Chief Justice Cassoday, averring that the several exactions made by the law are each and all based upon and measured by property, declared the inheritance tax law to be a tax on property within the meaning of the Constitutional clause, "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe." In his opinion, classification can be based upon "real differences affording rational ground for classification," but classification cannot be based upon mere differences in value as in the act in question. The Chief Justice declared such classification to be purely arbitrary and highly destructive of the equal rights guaranteed by the Constitution.

Justice Dodge agreed with the majority of the Court in their opinion that the "property" clause was intended merely to give the legislature the right to tax property and to exempt other property, and does not preclude taxation of transfers of property or of rights or privileges, but he declared against the constitutionality of the inheritance tax. While asserting that the uniformity clause was not essential to his conclusion, he nevertheless indicated very clearly that he regards the inheritance tax law as in violation of that clause. His contention is, however, that the progressive feature of the law is in violation of Sec. 1, Art. I of the State Constitution wherein equality before the law is guaranteed. He said, "Nothing seems to me more an outrage upon equal rights than discrimination by law

in favor of or against either the poor or the rich by reason of that fact, and nothing seems more to threaten the permanence and safety of society." He fears that the principle of progression sustained in the law under consideration may be reversed and in its reversed form become an instrument for the oppression of the weak and poor by the strong and rich. The learned Justice fails to see that discriminations so called against the rich may be regarded as necessary to the permanence of society.[7]

The Court based its decision that the legislature is not restricted to taxing property, upon two grounds; first the debates of the Constitutional Convention, and second, upon the history of taxation in Wisconsin. In the opinion of the writer neither affords a firm foundation for the construction placed by the Court upon the taxation clause of the Constitution. A careful study of the debates of the Convention both in the Journal of the Convention and as presented in the argument of the Court convinces the writer that it was the intention of the Convention to confine taxation to property. Nor can the writer agree with the learned Court that a different construction has in the history of Wisconsin taxation been placed upon the clause. Any excise taxes that have been levied have been justified under the police power of the state. The writer agrees with Chief Justice Cassoday in his contention that the gross receipts tax on the railroads was a tax on property and not an excise.* It seems to the writer that the Court has ascribed to the Constitution undue elasticity in order to justify a tax that can be justified as a property tax, in perfect conformity with the rule of uniformity. An inheritance tax may be and generally is regarded as an excise upon the right to receive property by will or through the operation of the intestate laws, but it may just as properly be regarded as a tax levied upon property when it is so transferred. As for the rule of uniformity the Wisconsin law is clearly constitutional, since it makes no unreasonable discriminations; it treats alike all of the same class and all in like circumstances.

[7] January Term, 1906.
* Vide Chapter II, Part II.

THE INHERITANCE TAX.

Exemptions.	Relationship.	Primary rate.
$10,000	Widow	1 per cent.
5,000	Husband, lineal issue, ancestor, adopted child	1 per cent.
500	Wife or widow of son, husband of daughter, brother, sister, descendent of brother or sister	1½ per cent.
250	Aunt, uncle, descendent of aunt or uncle	3 per cent.
150	Brother or sister of grandfather or grandmother	4 per cent.
100	Any other relative, strangers, bodies politic or corporate	5 per cent.

Secondary Rates:
Over $25,000 and up to $50,000, 1½ times primary rate.
Over 50,000 and up to 100,000, 2 times primary rate.
Over 100,000 and up to 500,000, 2½ times primary rate.
Over 500,000, 3 times primary rate.

CHAPTER XIII

POLL TAXES

Almost from the beginning of Wisconsin's history as a separate politcal unit, in 1836, poll taxes have been levied within its borders. This tax, now a thing of the past in many parts of the state, is sanctioned by custom and tradition rather than by the Constitution, which in fact seems to forbid such a tax since it provides that taxes shall be on property. However, an eminent authority observes of the poll tax, "while it is in its nature a tax, it partakes, to some extent at least, of a police regulation. Neither in common speech nor in the customary revenue legislation would a burden of this nature be understood as embraced in the term tax; and statutory provisions for assessment are not therefore applicable to it unless made so in express terms."[1] The Territorial law of 1836 providing for the incorporation of towns made it incumbent upon males between the ages of 21 and 60 years of age to labor on the streets, roads, and alleys for at least two days in the year, or to pay $1 each in lieu of such labor.[2] In some places the poll tax was higher. The town of Potosi in Grant County was in 1841 authorized to levy a poll tax of $3, and the village of Geneva in 1844 was authorized to levy one of $2. In Potosi men between the ages of 21 and 50 were subject to the tax or road service in lieu thereof; in Geneva, men between 21 and 55.[3] A general highway law of 1837 provided that all males between the ages of 21 and 50 years, except those exempted and excused by the board of commissioners for good cause, should work two days in each year on the public highway. The revised statutes of 1839 specify

[1] Cooley, *On Taxation*, (third Ed.), 16.
[2] *Laws of Wis. Terr.*, 1836, 68.
[3] *Laws of Wis. Terr.* 1840-41, 87; ibid., 1843-44, 77.

that members of companies of mounted riflemen and dragoons are exempt. The law incorporating the City of Burlington provided that poll taxes should be applied to the repair of streets and to no other purposes.[4] An early law provided that all real estate should be taxed for the opening and working of highways at a rate not to exceed 1 per cent and that this tax might be commuted into labor at the rate of $2 a day.[5] Such was the character and scope of poll taxes in the Territorial period.

Before passing on to poll taxes in the state of Wisconsin it will be well to note briefly two or three court decisions relating to such taxes. In Maryland it has been held that compulsory labor on the highways with the privilege of substituting cash payment does not constitute a poll tax.[6] In Florida it has been decided that the clause in the constitution providing that "the mode of levying a tax shall be by valuation so that every person shall pay a tax in proportion to the value of the property that he has in his possession" does not prohibit the levy of a poll tax payable in labor.[7] In Nebraska it has been held that the legislature in delegating taxing powers to cities, etc., is not confined to those objects of taxation which a section of the constitution empowers the legislature to tax.[8] This last decision is in accord with the Wisconsin decision respecting local assessments.

The state poll tax law enacted in the first year of the state's existence provided that every male inhabitant between the ages of 21 and 50 years, excepting persons of color, paupers, idiots, and lunatics, should pay a highway tax of 75 cents. Highway taxes including both the poll and the property tax might be commuted into labor. It was stipulated also that every person wishing to make such commutation should furnish a spade, shovel, axe or hoe and if he were the owner of a "team, plow, wagon, cart, or other implement useful for working the high-

[4] *Laws of Wis. Terr.* 1837, No. 57, Sec. 35; *Revised Statutes,* 1839, 62, sec. 13; *Laws of Wis. Terr.* 1837, No. 84, sec. 12.

[5] *Laws of Wis. Terr.* 1837, No. 57, Sec. 36.

[6] *Short vs. The State, 80 Md.* 392.

[7] *Sawyer vs. Alton, 3 Scam.* 127.

[8] *York vs. Chicago Band Q. R. R. Co., 56 Neb.* 572: The court cited *Magneau vs. French, 30 Neb.* 843, also *Templeton vs. Tekamah, 32 Neb.* 542; the three cases above are cited in Cooley (third Ed.) 105.

ways'' he might be compelled to furnish such implement if his taxes amounted to at least $3. Persons commuting their highway taxes into labor were allowed 75 cents for every eight hours' work and 75 for every plow, wagon, yoke of oxen, team of horses, etc., furnished.[9]

In the first message of the first Governor of the state some very pointed observations in relation to highway taxes were made. In some districts the poll tax was paid into the town or county treasury and never paid out for road improvements, whereas it was the manifest intention of the poll tax law to further the building and maintaining of good roads. Resident tax payers too frequently performed their labor on the highways superficially so that in these cases also the aim of the per capita tax in a large measure failed of attainment. For still another reason the law failed to attain its end. As the rate of taxation was the same in towns and counties, in some districts where only a small amount of road labor was required a surplus arose; in others in which a large amount of labor was necessary to the keeping of the roads in a passable condition, because of the small amount of taxable property and the sparsity of population, there were deficits. Governor Dewey declared that the people of the state as a whole were interested in good roads and that it was unjust that small districts should be burdened with oppressive road taxes when adjoining districts enjoyed the same benefits without making equally great expenditures. ''Where there are equal benefits, there should be equal contributions.'' It was recommended that all highway taxes be paid in money and that they be expended in the opening and improving of highways under the direction of a road superintendent to be appointed in each county or town.[10]

The legislature, however, made no change but in 1856 the poll tax was increased to $1. Since 1899 the common councils of cities have had authority to levy a poll tax of $1.50 on the electors of cities.[11]

The law of 1872 providing for the incorporation of villages

[9] *Revised Statutes*, 1849, ch. 16, secs. 22, 31, 32, 33.
[10] *Governor's Message*, 1849, 7 and 8.
[11] *General Laws, 1856*, ch. 90; *Laws of 1899*, ch. 211.

declared that each village was to constitute a road district and was to levy the poll-tax, which is $1 on all males over 21, but no mention was made of commutation into labor. An amendment of 1881 added "and under 50 years" and provided that the tax might be paid in either money or labor. The village poll tax if unpaid is together with 50 per cent damages and the cost of the action to be recovered by suit by the treasurer, but another amendment of 1881 provided that the overseer of highways is to bring suit only in case he is unable to find goods and chattels the sale of which will yield a sum sufficient to satisfy the tax. Default of payment of judgment secured in such a suit works execution against the body of the defendent as in cases of tort. The proceeds of the village poll tax are to be used in improving streets, constructing and improving side walks and crosswalks and setting out shade and ornamental trees. If the poll taxes are insufficient for these purposes, special taxes may be levied with the consent of the people. The Boards of Trustees of villages are permitted to exempt members of fire companies or any poor person who is not able-bodied.[12]

Other provisions for exemption will be noted briefly. A law of 1870 exempted disabled soldiers of the civil war. In 1888 it was provided that persons who had served for ten years in the Watertown fire department were exempt as long as they continued to live in Watertown. At present, soldiers and marines of the civil war, members of the Wisconsin National Guard, honorably discharged members of the organization who have served for five years or been discharged because of injury received while on duty, members of fire companies, paupers, idiots, lunatics, and officers and employes of the state prison are exempt.

As was stated in the opening paragraph of this chapter the poll tax is now obsolete in many parts of the state. The Tax Commission of 1898 pointed out in its report that in 1897 more than one-half of the towns and villages and about two-thirds of the cities collected no poll taxes. There was no county in which all of the taxing districts levied the tax and in eight counties no poll tax at all was levied. Where attempts were made to

[12] *Laws of 1872*, ch. 188, secs. 52, 53; *Laws of 1881*, ch. 243, 251.

levy the tax only a small sum was realized. In 39 out of a total of 111 cities only $12,578 was realized. It is clear that public sentiment in Wisconsin is unfavorable to the poll tax, hence the commission recommended its abolition on the ground that laws that cannot be enforced and will not be obeyed have a tendency to weaken public conscience and destroy respect for all law.[13] The poll tax laws are still on the statute books, but in many parts of the state they are dead letters; it is certain that this tax is disappearing.[14]

[13] *Report of Tax Commission* 1898, 106.

[14] The poll tax, it is understood, was never a state tax in Wisconsin.

CHAPTER XIV

THE HAWKERS' AND PEDDLERS' TAX

The Hawkers' and Peddlers' Tax may be discussed under five heads; the principle of justification lying back of the tax, the question of its legality and constitutionality, the persons upon whom it is and has been levied, the rates at which levied, the penalties for evasion and its productivity and administration.

In Wisconsin as in other states the primary purpose of this tax has been to compel traders from other states to pay something toward the support of the state under whose protection they sell their wares and thus destroy an advantage that the non-resident trader might have. by reason of paying no taxes, over the resident trader. The earlier laws, however, were directed against the products of other states rather than against non-resident traders. They taxed not the non-resident trader but the products of other states. It has been held that it would be unjust if a non-resident should be permitted to do business in a state and pay neither a license tax on his business nor a tax on his property while the resident merchant pays both. It would be unjust for the non-resident trader, who enjoys all the advantages of the resident trader to escape all taxation to which the latter is subject.[1] It seems to the writer that the non-resident trader cannot be justly expected to pay a tax on his business if the resident trader does not, which is the case in Wisconsin. He pays as much in taxes as the resident trader. In Wisconsin he pays as much in consumption taxes. It is true that if a Michigan or an Illinois trader owns a horse and wagon he is not taxed on it in Wisconsin, but it is to be presumed that he is taxed on this property in his home state and it is hardly

[1] *31 Md.* 279.

fair to ask him to pay another tax in Wisconsin, nor has he any competitive advantage over the Wisconsin trader, unless of course the rate of taxation in his state is lower than in Wisconsin, but the difference would in most, if not in all cases, be unimportant in so far as the relative competing strength of the two traders as sellers is concerned. From the social point of view a tax directed without qualification against peddling can be easily justified under the police power of the state, for it is socially desirable to encourage fixed places of business and thus to protect citizens against the too frequent dishonesty of strange, itinerant traders. However, even if there could be doubt as to the non-justifiability of taxing non-resident traders it would be difficult to find justification for the early Wisconsin laws placing a tax on the peddling of products of other states. Such taxes were in sum and substance a kind of protective tax not to be justified under a system of free trade between the states.

Before passing on to a discussion of the law on the subject of hawkers' and peddlers' taxes it may be well to give a legal definition of the terms hawker and peddler. "Hawkers, peddlers, and petty chapman are persons traveling from town to town with goods and merchandise. The manner of traveling whether on foot or horseback, in wagons, carts, sleighs, or canal boats is immaterial. It is of no consequence whether the vehicle or conveyance is drawn by horses, mules, oxen, or steam propeller."[2]

The classic case in so far as peddlers' taxes are concerned is the well-known one of *Welton vs. Missouri* decided by the United States Supreme Court in 1875. The Missouri Supreme Court had held valid as a police regulation the law of that state requiring the payment of a license tax by all peddlers selling goods not the growth, produce or manufacture of the state of Missouri. This Missouri law was substantially the same as the Wisconsin law of 1852. The federal court in over-ruling the state court held that the law infringed upon the power of Congress to regulate commerce, which power includes the power of determining how far commerce shall be free and untram-

[2] *1 Harris*, 336.

meled.[3] Various state courts have decided in the same way.[4] The state of Maryland required traders resident in the state to pay license taxes varying from $12 to $150, according to the value of their stock, while non-resident traders were required to pay $300. In the case of *Ward vs. Maryland* the federal Supreme Court held that this law worked a violation of the privileges and immunities of citizens of other states. The Court said that if the states were allowed to levy discriminating taxes on the citizens of other states the power of Congress to regulate interstate commerce would soon become valueless.[5] In the case of *Walling vs. Michigan* the Supreme Court held that the Michigan tax on persons, not residing in the state nor having their chief place of business there, who are engaged in selling or soliciting the sale of liquors to be shipped into the state constitutes a regulation and a restraint on interstate commence, since it was necessarily discriminatory in favor of the products of the state.[6] In the case of *Robbins vs. the Shelby County Taxing District* the federal Supreme Court in 1886 decided that while a state may tax property within its jurisdiction,* whether in the original packages or not, it cannot tax the business of importing from other states, either by license or otherwise, because the right to bring goods from other states includes the right to sell or solicit sales. This was a commercial traveler case.[7]

The peddlers' tax has been passed upon three times by the Wisconsin Supreme Court. The amending law of 1870 provided that all resident peddlers selling goods not produced in the state and all non-resident peddlers be licensed. In the case of *Morrill vs. the State,* decided in 1875 but prior to the decision in *Welton vs. Missouri,* the Wisconsin Supreme Court upheld the law and the tax as an exercise of the police power of the state. The purpose of the law was defined as the encour-

[3] Judson, *Taxation*, 142 or Thayer's *Select Cases*.
[4] Judson, ibid. 141.
[5] *2 Wallace*, 419.
[6] *116 U. S.* 446. This and the preceding cases are cited in Judson, 140.
*In some cases State Courts have upheld taxes on hawkers and peddlers on the ground that a State has a right to tax all property within its jurisdiction.
[7] *120 U. S.* 489, cited by Judson, 146-147.

agement of fixed places of business, demanded by public policy, and the protection of the citizens of the state "from the arts and importunities and frequently dishonest practices" of a class of traders who are usually strangers and are not as directly amenable to the legal and social restraints which necessarily have a great influence upon the trader who has a fixed place of business. The learned Court did not attempt to show the relation between this policy of protection and the taxing of resident peddlers who sold goods produced in other states and the exemption of those selling Wisconsin products. We must infer from this decision that a peddler selling lightning rods manufactured in Illinois or wooden nut-megs made in Connecticut is more dangerous to the welfare of Wisconsin society than traders selling the same articles produced in Wisconsin. The law of 1870 the Court declared was not in restraint of interstate commerce because, while it restricted hawking and peddling, it did not interfere with the regular and usual course of trade. Under the law, the Singer Sewing Machine Company could not peddle its machines without a license, but it was not prevented from freely selling its machines at regular places of business.[8]

The next year in the case of *Van Buren vs. Downing*, the court held that in the light of *Welton vs. Missouri*, the Wisconsin law of 1870 was in conflict with the federal constitution. The court, however, upheld the law of 1876, which provided that only peddlers selling products not their own growth or make[9] should be taxed. Justice Dodge in handing down the opinion of the court in the case of the *State vs. Whitcom*, tried in 1904, very aptly characterized the peddlers' tax law as "an edifice of composite architecture, made up of a series of portholed turrets for offense against the obnoxious, and sheltered corridors to shield the favorites of the successive legislatures which have contributed to the conglomerate now under consideration." The classification of the law was pronounced inconsistent with both the theory of police power and the theory that the peddlers' exaction is a

[8] *38 Wis.* 428.
[9] *41 Wis.* 122.

tax, and also in violation of the guarantee of equal protection of the laws.[10]

Because of the mass of details in the legislation upon this subject the further history of the hawkers' and peddlers' tax in Wisconsin will be set forth under the three heads; the persons upon whom the tax has been levied, the rates of levy, and the penalties for evasion and the productivity and administration of the tax.

The only peddlers' tax authorized in the Territorial period was a high tax relating to the peddling of clocks. In 1837 the counties were directed to levy a tax of not less than $100 nor more than $300 on persons hawking wooden or brass clocks. This was clearly a police regulation. They were also to put a license tax of not less than $10 nor more than $50 on the selling of merchandise, which tax of course affected peddlers.[11]

The first state peddlers' license tax law enacted in 1852 provided for taxes upon persons traveling from place to place for the purpose of selling or exposing for sale goods, wares, or merchandise not the growth or manufacture of the citizens of Wisconsin. Licenses were issued for one year. The law was so modified in 1856 that peddlers of books, newspapers, pamphlets or maps not printed in the state were required to pay the license taxes. A law of 1867 provided that itinerant vendors of patent rights and of territory for the sale, use or manufacture of patent right articles or of patent rights, except in the case of inventions of the citizens of Wisconsin, should procure licenses just as other peddlers. This law provided also that licenses might be granted for a portion of the year, also that licenses might be transferred by the Secretary of State from one person to another, on account of change of business or for any other good reason. The next year the law was extended to apply to those soliciting trade by sample or otherwise, except merchants or others of the state selling goods of their own manufacture. This amendment exempted from the payment of local licenses those having state licenses. An amendment of 1870 exempted from the peddlers' tax disabled soldiers of the civil war. In

[10] *122 Wis.* 110.
[11] *Laws of Wis. Terr.* 1837, No. 68, sec. 1.

Iowa a peddlers' license tax law was held invalid because it exempted persons who had served in the army or navy. The 1901 Wisconsin law was declared to make an unreasonable classification because of a similar exemption.[12] Up to 1870 the tax was directed against goods from outside of the state. The law of 1870 provided that all resident peddlers selling goods not produced in the state and all non-resident peddlers be licensed. The law enacted six years later exempted all peddlers who sold either directly or through members of their families or through employes goods of their own make or growth. It made no difference whether such peddlers were residents or not, consequently the tax was imposed only on peddlers who sold products not of their own growth or manufacture. An amendment of 1878 exempted peddlers selling exclusively at wholesale, also train boys, fish peddlers, and all residents of the state incapacitated for ordinary business or labor, because of being blind, deaf and dumb, maimed or crippled. Another amendment three years later provided that a license must be obtained for bartering or exchanging as well as for selling. An act of 1882 declared that the license law was not to be construed as applying to any dealer in agricultural machinery or farm implements or to his employes, provided that he be a bona-fide resident of the state. An amendment of 1885 declared that the license law was not to apply to any butcher peddling his meat. Another amendment of 1889 classed transient merchants, traders, or dealers as peddlers and defined a permanent merchant, as distinguished from a transient merchant, as one who remains in a locality for six months or more or who pays taxes on his goods, wares, merchandise, or other articles of trade. The law of 1895 provided that manufacturers, mechanics, nurserymen, or farmers might sell without a license goods not of their own production provided that they had had the goods in their possession for three months prior to their sale. Two years later it was stipulated that the peddlers' license law is not to apply to the soliciting of orders for the sale, or to the offering for sale, by sample

[12] *Laws of 1852*, ch. 386; *Laws of 1856*, ch. 117; *Laws of 1867*, ch. 176, sec. 2; *Laws of 1868*, ch. 177; *Laws of 1870*, ch. 40; *State vs. Garbrowski, 111 Iowa*, 496 cited by Judson, 601.

or otherwise, of goods, wares, or merchandise, notions or other articles of trade that are outside of the state and are after their sale to be shipped direct to the persons ordering or purchasing the same. It was further declared that the law should not apply to any transaction that involves interstate commerce. In 1901, persons selling fruits or vegetables in cities of the first class were declared exempt. This exemption and the exemption of soldiers of the civil war, of butchers, of cripples, and of those who had had the goods peddled in their possession for three months prior to their sale were declared by the Supreme Court of the state in the 1904 case to constitute an unwarranted classification. The history of this tax is a history of the influence on legislation of private interests of various kinds. A law of 1905 imposes the taxes without exception on all hawkers and peddlers. Such a law can undoubtedly be sustained under the police power of the state.[13]

It will conduce to clearness to give the rates in tabular form.

1852 (*Laws of 1852,* Ch. 386.)

Peddler on foot	$10
With a single horse or other beast of burden	30
With a vehicle drawn by two horses or other animals	60

(Reduced to $50 by *R. S. 1853,* Ch. 50. sec. 3.)

1867 (*Laws of 1867,* Ch. 177, sec. 3.)

On foot	5
With single horse	15
With two horses	40
With more than two horses	50
Traveling by railroad, steamboat or other public conveyance	50
Traveling to solicit by samples, lists, catalogues or otherwise	25

1867 (sec. 4.) Specific taxes on peddlers of patent rights, etc. If he had an interest in or offered for sale more than half of the state, $20. If half the state or less, $10.

1870 (*Laws of 1870,* Ch. 72, sec. 3.)

On foot (including traveling on railroads or other public conveyance)	$15

[13] *Laws of 1876,* ch. 395, sec. 3; *Laws of 1878,* ch. 269; *Laws of 1881,* ch. 100; *Laws of 1882,* ch. 218; *Laws of 1885,* ch. 263; *Laws of 1889,* ch. 510; *Laws of 1895,* ch. 81; *Laws of 1897,* ch. 84; *Laws of 1901,* ch. 341; *Laws of 1905,* ch. 490.

With one animal carrying or drawing a burden..... $20
With a vehicle drawn by two animals 40
With a vehicle drawn by more than two animals 50

1889 (*Laws of 1889*, Ch. 510.)

On foot (including use of railroads or other public conveyance) $20
With one animal 30
With vehicle drawn by two or more animals 50
Transient merchants 15

Such merchants were to pay also a local license tax of not to exceed $5 a day.

1895 (*Laws of 1895*, Ch. 81.)

Rates were made $30, $45, $75; transient merchants $50 and a local license of not to exceed $20 a day. This $20 was changed to $50 later (*Laws of 1901*, Ch. 341.)* The rates now obtaining are those prescribed by the law of 1905, which imposes a license tax on all hawkers, peddlers, and transient merchants. (*Laws of 1905*, Ch. 490.)

Using a vehicle drawn by two or more animals or a conveyance propelled by mechanical power $75
Using a vehicle drawn by one animal 45
Using a hand cart or its equivalent 30
Using no vehicle 20
Transient merchants are obliged to pay a tax of 75
And are subject to a local license of not to exceed..... 25

(This applies especially to those who, having no fixed establishment, conduct fire or bankrupt sales.)

The administration of the hawkers' and peddlers' tax law has not, especially in the earlier years of the state's history, been marked by eminent success. In the first place it was a mistake not to provide for licenses for a fraction of a year. Such a provision was not made until 1867, fifteen years after the adoption of the tax. The Secretary of State in this interval received many applications for licenses for shorter periods

*By a law of 1877 (ch. 296, Sec. 4) showmen exhibiting any wild animal or other object of curiosity are required to pay a license of $20 a year. By a law of 1903 (ch. 393) caravans and menageries are taxed $100 a year. Showmen exhibiting on fair grounds of associations receiving aid from the state are exempt. In such cases a bond is required.

than one year. Some peddlers did not confine their business to Wisconsin but merely passed through the state, spending only a few weeks or months within its boarders; others pursued the business of peddling only in the seasons when they could not engage in other work; some whose sole occupation was peddling were not able to advance the amount required for a full years' license. Such were some of the conditions bearing on the administration of this tax law, when in 1852 the Secretary of State declared that strict justice as well as financial expediency demanded that licenses be issued for as short a period as three months.[14] The legislature, however, took no action and the tax continued to be evaded. Some evaded it because it was easy to do so and there was no penalty for so doing; some because they could not pay it; others because it was or seemed unjust, and it was in many cases. The receipts from this tax were in the year ending September, 1865 only $180; for the next year, only $130. As the state was overrun with peddlers it was evident that only a very small proportion of them paid their taxes. A great many of these peddlers were non-residents. On the ground of justice to the resident merchant and to the hawker who paid his tax the legislature was urged to take measures looking to a better administration of the law. It was recommended that it be made the duty of every sheriff, constable, or city marshal to call upon every peddler whom he should meet to show his license and if the peddler failed to do so to take him before a justice of the peace.[15]

It may be observed at this point that in 1876 the law was extended so as to apply to persons buying and selling the products of farmers. Under this clause many farmers who on their way to market bought products from their neighbors were arrested and fined for peddling without a license. The protest of the Governor in 1877 and his recommendation that this part of the law be abolished led to that end the same year.[16]

The first penalty was provided for in 1867, a penalty of 10 per cent of the amount of the tax, if not paid when due. A

[14] *Secretary of State's Report*, 1852, 23.
[15] *Secretary of State's Report*, 1866, 38.
[16] *Laws of 1876*, ch. 395; *Laws of 1877*, ch. 296; *Governor's Message* 1877, 17.

penalty of $25 with costs not to exceed $5 was to be imposed for peddling patent rights or patent right territory without a license, and the goods, wares, and merchandise of the offender were to be levied upon. Still the violations of the law continued. In 1872 provision was made for the appointment of a treasury agent to enforce all license laws.[17] However, the difficulty in collecting the tax continued, and hence in 1889 rather severe penalties were provided for. The penalty for violating the law was made a fine of from $50 to $100. Failure or neglect to produce a license when demanded by the treasury agent, any special treasury agent, or any sheriff, deputy, policeman, marshall, constable, or justice of the peace was made punishable by a fine of not exceeding $20 or imprisonment not exceeding thirty days or both. The term of imprisonment was changed to twenty days in 1899. In 1905 the penalty was made a fine of $25 to $100. In default of payment the culprit was to be imprisoned for not exceeding sixty days.[18] The receipts for the fiscal year ending June 30, 1906 were $1,872.75.

The present law makes no qualifications nor exemptions, but applies to all peddlers, hence in the light of judicial decisions it seems undoubted that it can be sustained under the police power of the state.[19]

[17] *Laws of 1872*, ch. 177.

[18] *Laws of 1867*, ch. 176; *Laws of 1868*, ch. 177; *Laws of 1889*, ch. 510; *Laws of 1899*, ch. 52; *Laws of 1905*, ch. 490.

[19] Licenses are now for one year. *Laws of 1907*, ch. 634.

CHAPTER XV

PUBLIC WORKS—THE MILWAUKEE AND ROCK RIVER CANAL

Wisconsin entered the Union not long after many of the older states had come to grief on the rock of internal improvements, and consequently its constitution forbids state expenditures for such works. The Milwaukee and Rock River Canal project, which in the Territorial period aroused a keen and wide-spread interest, is of historical importance chiefly because if this canal plan had been carried out the state of Wisconsin would have had the interesting experience of owning and operating a canal. The question of a canal between Rock River and Lake Michigan began to be agitated as early as 1836, the year of the organization of Wisconsin Territory. On January 5, 1838 Congress passed a bill authorizing the incorporation of the Milwaukee and Rock River Canal Company, and on June 18 of the same year Congress granted to the Territory of Wisconsin for the purpose of aiding in the construction of the canal the theretofore unappropriated odd numbered sections of public land on both sides of the canal route. The Act of June 18 provided that whenever the Territory should be admitted into the Union as a state the lands granted for the construction of the canal or such part of such lands as might not already have been sold and the proceeds applied to the work should vest in the state of Wisconsin to be used for the completion of the canal. Furthermore, the state of Wisconsin was to have as many shares of stock of the canal company as should be equivalent to the aggregate of all sums of money arising as net proceeds from the sale of the lands and applied to the construction of the canal, and the state was to be entitled to the same dividends as any other stockholder. In the event of the state's making no

other adequate provision for buying out the other stockholders, the dividends on the state's stock and all additional proceeds from the canal lands over and above what was expended on the work of construction were to constitute a fund, to be applied to the extinguishing of the claims of all other stockholders until the entire stock vested in the canal should have been acquired by the state.

The law of 1838 provided that the Territory might borrow, with the canal lands as security, such sums as it might deem expedient. This authority to borrow was given in order that the construction of the canal might be expedited and the sale of the lands deferred to a time when a better price might be obtained. If the canal was not begun within three years and finished within ten, the state of Wisconsin was to be responsible to the Federal Government for all moneys received for the lands granted in aid of the canal project.[1]

At the session of the Territorial legislature beginning November 26, 1838, a bill was introduced to authorize the Governor to borrow not more than $500,000 for not less than ten nor more than thirty years and at a rate not exceeding 6 per cent. The bonds to be issued were not to be sold below par and were to be secured by the proceeds of the sale of the canal lands and by as much of the canal as should belong to the Territory or the state. All surplus accruing to the canal fund from sales, interest, canal tolls, or water rents over and above the interest on the bonds was to be applied to the purchase of the bonds or to be invested in productive stocks until the bonds should become payable. This bill, which on the whole seems to have been a wise one, except perhaps that the rate of interest provided for was too low, failed to become a law.[2] The next year, however, on February 26, the Governor was authorized to borrow $50,000. The conditions and stipulations were as in the bill of 1838.[3] The stringency in the money market at that time prevented the sale of the bonds. hence in 1841 a law was enacted authorizing the Governor to borrow not exceeding $100,000 at 7 per cent. Gov-

[1] Smith, William R., *History of Wisconsin*, Part II, 357, 361.
[2] Smith, supra, 364.
[3] Smith, 369.

ernor Dodge appointed Byron Kilbourne, with power of attorney, agent of the Territory for the negotiation of the loan.

On September 1, however, the new Governor, James D. Doty, revoked the authority given to Mr. Kilbourne, basing his action on the ground that Mr. Kilbourne's appointment was without authority and that the canal was impracticable. A committee of the legislature, which reported February 3, 1842, sustained the Governor in the matter. It was the opinion of the committee that the laws pertaining to the canal vested no power in the Governor to appoint an agent to negotiate the loan authorized in 1841.[4]

In the meantime Mr. Tweedy, the canal land receiver, had refused to accept in payment for bonds $30,000 worth of certificates of the Ohio Life Insurance and Trust Company. The receiver held that the bonds were to be sold for specie. The law read money. It was found impossible to sell the bonds for specie, as they were not to be sold below par and specie bore a premium of 5 per cent.

Soon after the legislative report referred to above was made, the legislature enacted two laws repudiating the canal trust. The first law remitted absolutely all interest due the Territory on account of the canal lands prior to December 22, 1841 and all interest due after that date, except so much as should be required to meet the interest on any loan that had been made for the promoting of the canal and also so much as should be necessary to defraying the costs of collecting interest.[5] There is no little doubt as to the legality of these remissions, as the canal lands had been given for the express purpose of aiding in the construction of the canal. The second law revoked all authority to negotiate a canal loan, took away the authority of the acting canal commissioner to pass upon contracts for materials and labor and the authority of the register and receiver to pay for labor and materials. The power of the commissioners to apply the canal funds to the construction of the canal was revoked also.[6]

[4] Smith, 390, 407.
[5] Smith, 409.
[6] Smith, 410.

Resolutions were passed asking Congress to take back its lands and to make provisions for the return to the purchasers of canal lands of the excess in the price of their lands. The canal lands had been sold at a minimum price of $2.50 an acre, whereas the regular price of government land was $1.25. Congress decided that nothing could be done without the consent of the canal company, and consequently there ensued a long drawn out controversy as to the Territory's obligations in the premises. The facts are as follows: the canal company was authorized by Congress and the Territory was given certain lands to be used in aid of the canal. The question is, did the Territory in accepting the land grant bind itself to carry out the canal project and did it become responsible for the land and the proceeds therefrom? It is not clear that the Territory entered into a non-suspendable partnership with the company but it is clear that the Territory by the terms of the grant became responsible for all moneys realized from the sale of the lands. A Territorial act of 1843 suspended sales of canal lands and an act of 1844 postponed indefinitely payment of all principal and interest due or to become due from purchasers of canal lands; and on March 13, 1848 Congress provided for the reimbursement of those who had paid more than $1.25 an acre for canal lands. On March 11, 1848 the Territorial legislature repudiated the ten canal bonds outstanding. Up to December 31, 1847 the total expenditure on the canal was $56,745.33, of which the Territory paid $31,876.97; the company, $24,868.36.

The Act of Congress admitting Wisconsin into the Union provided, in compliance with the Territory's request, that the unsold canal lands should be held and disposed of by the state of Wisconsin as part of the 500,000 acres of land to which the state was entitled according to the provisions of an "act to appropriate the proceeds of the sale of the public lands and to grant preemption rights," approved September 4, 1841. Congress added the proviso, however, that the liabilities incurred by the Territorial government in connection with the canal land grant should be paid and discharged by the state.[7]

[7] Smith, 438.

Not only did the Territory repudiate ten of its canal bonds, but it misappropriated over $100,000 of the canal fund. Of this sum $80,000 was used for the two constitutional conventions.[8] The National Government has claimed that the state's indebtedness to the canal fund is $101,262.33, which sum has been withheld from the five per cent of the net proceeds of the sale of United States lands within Wisconsin, which five per cent it will be recalled goes into the school fund of the state.

The opposition to the Milwaukee and Rock River Canal came chiefly from those who were interested in the proposed Fox and Wisconsin River Canal. The Fox and Wisconsin people could not hope for appropriations for their canal so long as the Milwaukee and Rock River project gave promise of being a successful venture and therefore they opposed the Rock River Canal, which the Wisconsin historian, William R. Smith, thought would have been completed in four or five years if the $500,000 loan bill had become a law.[9] It is quite probable, however, that much of this half million dollars would have been wasted and the canal project would have become a source of corruption and graft.

[8] Smith, 442.
[9] Smith, 368, 369.

CHAPTER XVI

RECEIPTS AND EXPENDITURES CLASSIFIED. STATISTICS OF POPULATION AND RESOURCES

I. Receipts

1. State taxes received from the counties and state taxes received from corporations.

The purpose of this table is to show the amounts received from the counties each year in the form of taxes and more especially to show the growth of the corporation tax, both absolutely and relatively. It is to be noted that in the earlier years of the state's history the amounts of taxes received from the counties were always less than the amounts due.[1]

Year.	Received from the counties.	Received from the corporations.
1849	$52,934 96	$11 00
1850	98,662 36	41 00
1851	79,341 00	86 00
1852	89,208 72	
1853	93,621 51	3,753 42*
1854	168,477 93	18,154 38*
1855	227,223 15	31,605 44
1856	342,275 67	42,669 92
1857	289,098 55	48,487 87
(Report for this year was for nine months only, as the financial year was changed so that it extended from Oct. 1, to Sept. 30.)		
1858	259,965 91	110,552 05
1859	420,878 44	132,898 73
1860	245,189 77	140,809 18
1861	259,771 50	132,715 09
1862	326,897 94	178,413 02
1863	606,025 75	178,441 25
1864	387,164 49	204,900 13
1865	780,755 07	249,345 45
1866	880,033 42	261,386 41
1867	349,288 04	206,842 46

[1] From 1857 to 1901 inclusive the financial year ended Sept. 30. Since 1902 it has ended June 30. and therefore figures for 1902 include only nine months.

* Nearly all these amounts were from taxes on banks.

Year.	Received from the counties.	Received from the corporations.
1868	662,697 55	292,972 14
1869	543,478 16	316,314 52
1870	638,902 74	336,570 50
1871	698,037 96	295,793 93
1872	685,040 93	335,570 33
1873	781,875 60	277,464 60
1874	733,145 90	464,243 62
1875	592,069 75	506,735 35
1876	657,067 55	457,385 91
1877	725,899 15	430,367 14
1878	648,153 90	424,035 37
1879	777,183 65	444,375 02
1880	563,088 52	462,311 00
1881	775,148 01	581,790 50
1882	573,935 67	641,574 26
1883	812,356 37	744,918 08
1884	433,403 24	825,082 93
1885	338,177 35	808,361 78
1886	893,304 01	831,459 26
1887	902,315 87	846,816 82
1888	996,504 41	1,155,747 83
1889	1,206,923 65	1,036,453 83
1890	1,669,184 83	1,103,633 26
1891	871,571 16	1,242,930 20
1892	836,329 85	1,337,851 23
1893	1,015,231 80	1,297,024 29
1894	1,030,815 90	1,583,111 31
1895	959,531 70	1,321,640 26
1896	1,070,235 26	1,323,472 11
1897	1,260,138 83	1,410,645 41
1898	1,142,277 70	1,418,297 54
1899	1,526,286 73	1,710,388 60
1900	1,389,312 30	2,004,527 58
1901	1,401,892 58	2,064,119 19
1902	2,290,532 88	1,234,988 93[2]
1903	2,300,235 43	2,523,501 20
1904	1,289,248 91	2,506,540 25
1905	1,362,558 57	2,567,990 27
1906	1,450,439 54	4,050,495 85

2. Taxes from different kinds of corporations.

a. From Railroads.

1855	$5,013 11	1873	$210,374 99	1891	$1,140,046 64
1856	9,173 63	1874	393,235 40	1892	1,220,674 88
1857	14,203 56	1875	436,414 46	1893	1,156,260 75
1858	19,388 80	1876	395,952 64	1894	1,438,758 66
1859	12,923 72	1877	380,726 26	1895	1,175,752 52
1860	23,555 96	1878	379,474 69	1896	1,172,793 63
1861	25,056 29	1879	395,896 46	1897	1,265,094 54
1862	90,483 01	1880	418,148 76	1898	1,247,357 03
1863	107,561 10	1881	483,975 42	1899	1,360,120 14
1864	128,003 97	1882	586,328 58	1900	1,547,141 64
1865	176,957 65	1883	683,082 51	1901	1,600,379 79
1866	203,296 10	1884	754,269 44	1902	857,854 55
1867	234,480 71	1885	733,195 57	1903	1,795,285 60
1868	225,784 51	1886	747,870 99	1904	1,913,396 28
1869	235,551 43	1887	763,994 56	1905	1,955,894 56
1870	247,296 72	1888	1,068,632 96	1906	3,410,804 35
1871	241,130 58	1889	947,772 04		
1872	228,528 49	1890	1,008,559 04		

[2] Railroad tax fell off one-half in this year, which was a panic year.

b. From Plank and Gravel Road Companies and from Bridge Companies. There were no receipts from Gravel Road Companies until 1871, and none from Bridge Companies until 1899.

1855	$273 24	1873	247 68	1891	
1856	503 30	1874	273 79	1892	
1857	253 09	1875	173 84	1893	
1858	614 71	1876	164 96	1894	
1859	310 38	1877	161 42	1895	
1860	191 58	1878	148 07	1896	
1861	113 12	1879	96 80	1897	612 70
1862	109 85	1880	136 38	1898	668 59
1863	128 21	1881	104 57	1899	606 09
1864	96 23	1882	107 16	1900	584 65
1865	116 49	1883	112 28	1901	352 99
1866	88 92	1884	32 47	1902	33 33
1867	66 95	1885	34 31	1903	275 21
1868	119 47	1886	33 44	1904	289 87
1869	105 11	1887	33 12	1905	306 61
1870	198 29	1888	32 05	1906	1,001 15
1871	317 72	1889			
1872	200 35	1890			

c. From Banks.

1853	$3,535 42	1861	98,072 12	1869	2,400 00
1854	18,121 88	1862	63,590 70	1870	
1855	26,319 09	1863	52,208 49	1871	
1856	33,952 00	1864	52,016 56	1872	45,177 87
1857	33,960 79	1865	40,658 72	1873	
1858	90,412 79	1866	23,271 94	1874	1,500 00
1859	118,806 85	1867	4,582 50		
1860	106,155 43	1868	778 78		

d. From Loan and Trust Companies.

1891	$668 14	1897	2,272 80	1903	2,426 58
1892	748 82	1898	2,604 10	1904	3,090 43
1893	1,025 85	1899	2,317 01	1905	4,247 37
1894	1,902 84	1900	2,261 50	1906	7,963 51
1895	2,598 33	1901	2,487 89		
1896	2,271 68	1902	2,857 43		

e. From Boom Companies.

1892	3,095 13	1897	1,329 63	1903	779 45
1893	4,187 66	1898	1,769 72	1903	558 71
1894	1,579 11	1899	1,886 10	1904	395 01
1895	1,176 92	1900	1,293 72	1905	316 13
1896	2,379 17	1901	1,578 50	1906	346 29

f. From Telegraph Companies, Telephone Companies, Express Companies, Street Railway and Electric Lighting Companies, Sleeping Car, Freight Line and Equipment Companies.

1. From Telegraph Companies.

1849	$11 00	1869	948 00	1889	7,350 73
1850	41 00	1870	130 20	1890	7,775 77
1851	86 00	1871	1,094 70	1891	8,691 16
1852		1872	205 00	1892	9,225 56
1853	118 00	1873	3,522 00	1893	9,657 69
1854	23 50	1874	2,846 00	1894	9,935 71
1855		1875	2,288 00	1895	9,999 45
1856	40 00	1876	2,288 00	1896	10,817 56
1857	61 50	1877	2,366 00	1897	10,694 29
1858	106 75	1878	2,519 00	1898	10,992 15
1859	133 00	1879	2,619 00	1899	11,199 60
1860	147 00	1880	2,679 00	1900	11,312 15
1861	183 00	1881	3,013 00	1901	11,507 35
1862	198 10	1882	3,417 00	1902	11,721 80
1863	193 10	1883	3,597 87	1903	11,431 20
1864	204 35	1884	4,568 85	1904	13,067 46
1865	193 10	1885	5,451 28	1905	13,288 94
1866		1886	5,618 53	1906	13,473 54
1867	528 25	1887	5,925 63		
1868	551 75	1888	5,807 03		

2. From Telephone Companies.

1883	$463 29	1891	5,076 43	1899	17,...4 74
1884	1,169 26	1892	5,520 43	1900	21,496 72
1885	1,585 99	1893	11,705 71	1901	25,224 89
1886	3,324 63	1894	9,716 29	1902	31,770 45
1887	3,459 31	1895	9,838 99	1903	37,414 94
1888	4,111 52	1896	9,744 64	1904	44,398 28
1889	4,442 38	1897	10,777 14	1905	53,475 10
1890	4,691 48	1898	15,477 59	1906	27,963 13

3. From Express Companies.

1900	$7,247 01	1903	4,765 00	1906	9,738 96
1901	14,084 54	1904	8,865 12		
1902		1905	8,383 76		

4. From Street Railway and Electric Lighting Companies.

1896	$746 73	1900	8,322 06	1904	12,071 35
1897	607 17	1901	9,274 07	1905	13,601 47
1898	4,131 90	1902	9,977 64	1906	17,890 01
1899	4,915 83	1903	12,000 64		

5. From Sleeping and Palace Car Companies.

1884	$128 15	1892	1,214 96	1900	16,900 31
1885	376 17	1893	1,198 04	1901	9,145 89
1886	1,039 31	1894	1,223 39	1902	
1887	511 36	1895	506 80	1903	6,240 05
1888	1,197 74	1896	2 051 14	1904	3,591 69
1889	1,228 80	1897	904 95	1905	3,555 79
1890	1,365 67	1898	852 69	1906	4,174 85
1891	894 32	1899	949 40		

6. Freight Line and Equipment Companies.

1900	$1,150 99	1903	1,990 68	1906	2,772 45
1901	973 40	1904	1,997 66		
1902	1,222 80	1905	1,990 26		

g. From Insurance Companies.

1859	$724 78	1875	67,859 05	1891	96,244 67
1860	10,759 21	1876	58,880 31	1892	109,597 00
1861	14,290 56	1877	47,113 46	1893	122,651 27
1862	15,136 36	1878	41,893 61	1894	129,981 05
1863	18,350 35	1879	45,772 76	1895	131,574 60
1864	24,579 02	1880	41,345 15	1896	133,505 13
1865	31,419 49	1881	44,697 51	1897	128,955 65
1866	34,729 45	1882	51,729 53	1898	145,420 73
1867	52,184 05	1883	57,361 13	1899	312,079 79
1868	65,737 63	1884	64,804 75	1900	326,947 68
1869	77,309 98	1885	67,718 47	1901	334,130 46
1870	88,950 31	1886	73,572 36	1902	319,223 15
1871	53,250 93	1887	72,892 84	1903	450,807 35
1872	61,459 62	1888	75,966 53	1904	506,787 25
1873	63,299 93	1889	83,010 60	1905	513,237 90
1874	66,988 43	1890	89,017 07	1906	555,269 77

h. Taxes for Education.*

1. The one mill tax for common schools.

1886	$488,139 61	1893	653,057 00	1900	625,000 00
1887	496,507 15	1894	654,943 00	1901	630,018 03
1888	581,264 75	1895	600,000 00	1902	1,436,984 00
1889	573,229 85	1896	603,473 00	1903	1,502,425 55
1890	577,092 82	1897	599,429 38	1904	1,099,332 50
1891	592,890 72	1898	600,570 62	1905	1,099,855 53
1892	623,859 42	1899	600,000 00	1906	1,167,035 73

*For other education taxes, see the chapter on State Taxes for Education.

2. Taxes for the University.

1878	$42,359 62	1888	72,658 09	1897	255,000 00
1879	41,310 30	1889	71,658 73	1898	255,000 00
1880	43,807 18	1889	200,000 00	1899	255,000 00
1881	44,558 27	1890	72,136 60	1900	268,000 00
1882	44,785 00	1891	74,111 34	1901	268,000 00
1883	45,639 51	1892	141,372 37	1902	280,000 00
1884	57,442 52	1893	146,937 89	1903	280,000 00
1885	59,549 54	1894	147,362 18	1904*	
1886	61,017 45	1895	135,000 00	1905	
1887	69,068 39	1896	256,476 00	1906†	

i. The Suit Tax, a tax of $1.00 on each and every civil action begun in a circuit court of the state. The purpose of this tax is to aid in paying the salaries of the judges. Clerks of courts have never accounted for anything like all of these taxes collected by them.

1848-1849-1850 ..	$3,090 00	1869	2,943 79	1888	5,286 00
1851	1,133 00	1870	4,248 46	1889	5,884 00
1852	2,124 00	1871	4,026 32	1890	5,755 00
1853	1,414 00	1872	3,460 00	1891	5,442 00
1854	1,363 00	1873	3,805 00	1892	6,700 00
1855	1,715 00	1874	3,856 89	1893	6,559 00
1856	4,087 50	1875	3,532 97	1894	7,908 00
1857	3,615 50	1876	5,577 12	1895	7,728 00
1858	7,403 00	1877	4,520 03	1896	7,406 00
1859	8,080 00	1878	5,786 63	1897	7,183 00
1860	6,526 59	1879	6,210 11	1898	7,023 00
1861	5,791 98	1880	6,075 32	1899	5,835 00
1862	3,443 66	1881	4,724 00	1900	5,130 00
1863	2,564 47	1882	6,211 11	1901	5,643 00
1864	2,265 18	1883	5,060 00	1902	5,871 00
1865	2,641 77	1884	4,504 00	1903	5,230 00
1866	2,928 88	1885	4,708 00	1904	5,609 00
1867	2,898 84	1886	5,449 00	1905	5,515 00
1868	2,611 62	1887	5,323 00	1906	6,229 00

j. The Hawkers' and Peddlers' Tax. In later years—after 1872,—includes taxes on showman.

1852	1,440 00	1867	3,090 92	1882	14,080 36
1853	850 00	1868	9,710 57	1883	13,218 93
1854	726 08	1869	3,793 32	1884	13,005 85
1855	860 00	1870	3,049 52	1885	15,041 45
1856	650 00	1871	2,635 62	1886	15,867 70
1857	290 00	1872	7,964 82	1887	13,493 15
1858	90 00	1873	7,188 29	1888	13,606 95
1859	180 00	1874	12,064 74	1889	16,755 50
1860	270 00	1875	13,061 76	1890	15,084 25
1861	390 00	1876	11,143 24	1891	17,196 17
1862	540 00	1877	11,743 38	1892	14,267 18
1863	290 00	1878	9,351 84	1893	15,228 17
1864	240 00	1879	6,818 72	1894	12,841 95
1865	180 00	1880	8,087 43	1895	19,668 69
1866	130 00	1881	13,665 47	1896	15,994 58

* $345,000 transferred from general fund in 1905: no university tax in 1904.
† $597,914 transferred from general fund: no university tax levied in 1905.

k. Receipts from Fees, 1881–1906.

1881	$13,154 02	1890	31,335 55	1899	135,455 22
1882	20,530 77	1891	32,994 22	1900	96,594 55
1883	21,504 39	1892	33,448 07	1901	213,587 99[a]
1884	21,502 86	1893	39,828 36	1902	156,094 42[a]
1885	19,403 39	1894	30,980 07	1903	294,421 11[a]
1886	23,650 09	1895	40,565 42	1904	271,301 74[a]
1887	26,197 22	1896	44,956 90	1905	128,450 39
1888	26,146 10	1897	55,774 97	1906	192,788 45
1889	27,775 73	1898	124,513 88		

l. Receipts from Prisons and Charitable Institutions, 1895–1906.

1895	$34,486 38	1899	88,887 05	1903	101,964 80
1896	80,120 43	1900	83,812 76	1904	112,383 04
1897	79,916 32	1901	85,824 40	1905	134,248 29
1898	92,709 44	1902	77,926 40	1906	145,719 31

II. Expenditures

1. Total Expenditures from Funds raised by taxation. Includes all expenditures except those paid from the Trust Fund Incomes.

1849	$78,085 73	1865	1,491,536 20[b]	1881	1,196,351 68
1850	62,746 20	1866	1,157,459 97[b]	1882	1,186,807 54
1851	101,835 98	1867	826,533 82	1883-84	2,332,857 57
1852	136,096 23	1868	946,518 65	1885-86	3,416,415 28
1853	160,407 14	1869	919,372 33	1887-88	4,271,186 78
1854	222,154 12	1870	906,329 58	1889-90	4,476,894 18
1855	253,059 52[a]	1871	965,877 42	1891-2	2,980,614 32
1856	107,649 50[a]	1872	1,076,442 96	1893-94	3,408,391 49
1857	198,633 23[a]	1873	1,191,966 01	1895-96	4,840,877 24
1858	461,401 33	1874	1,038,703 34	1897-98	5,144,485 43
1859	520,223 52	1875	1,260,168 39	1899-1900	5,219,297 75
1860	370,573 94	1876	1,137,788 65	1901-02	5,153,716 88
1861	377,684 21	1877	1,204,900 40	1903-04	6,779,235 39
1862	506,386 99	1878	1,047,796 23	1905-06	8,695,994 73
1863	810,940 55[b]	1879	1,055,112 51		
1864	709,846 74[b]	1880	1,179,815 52		

2. Expenditures for General Administration and Supervisions, including the salaries of state officers, commissioners, etc.,

[a] Includes sundry sources. Fees of but slight consequence before 1881.
[b] Estimated.
[c] For nine months.
[d] $272,156.16 for the war fund.
[e] $200,000 for war fund.
[f] $200,000 for war tax, $783,800 for redemption of bonds and loans.
[g] $378,076.03 for certificates of indebtedness. $197,444.92 for interest.

and the expenses of their departments and offices. The expenses of the state courts are not included.

1849	$5,950 00	1865	48,214 26	1881	109,301 00
1850	4,892 33	1866	45,242 06	1882	121,664 13
1851	5,875 00	1867	57,026 78	1883-84	228,398 64
1852	15,050 00	1868	64,112 10	1885-86	267,264 15
1853	25,750 00	1869	64,248 44	1887-88	290,056 60
1854	16,350 00	1870	69,400 49	1889-90	319,643 25
1855	13,150 00	1871	75,954 13	1891-92	354,674 33
1856	13,150 00	1872	72,045 55	1893-94	333,552 43
1857	24,750 00	1873	70,187 35	1895-96	386,832 24
1858	29,350 00	1874	61,366 77	1897-98	662,583 45
1859	26,900 00	1875	63,787 77	1899-1900	975,926 69
1860	36,311 98	1876	68,842 33	1901-02	872,948 70
1861	28,662 30	1877	70,964 36	1903-04	1,016,516 28
1862	30,380 97	1878	108,998 31	1905-06	1,158,051 35
1863	46,609 18	1879	107,547 23		
1864	48,878 28	1880	106,111 43		

3. Legislative Expenses. Compensation of members, officers, clerks; mileage, postage, printing.

1849	$20,175 00*	1865	61,000 00*	1881	101,210 96
1850	14,309 58	1866	82,420 15	1882	103,217 68
1851	36,215 52	1867	86,201 83	1883-4	124,222 28
1852	45,406 88	1868	81,423 76	1885-6	145,834 60
1853	59,549 90	1869	91,742 60	1887-8	157,496 36
1854	40,000 00*	1870	95,838 94	1889-90	170,168 10
1855	27,025 00*	1871	101,666 12	1891-5	157,181 49
1856	29,462 50	1872	112,326 80	1893-4	155,209 16
1857	39,000 00*	1873	103,730 22	1895-6	167,828 74[a]
1858	29,300 00*	1874	88,010 51	1897-8	209,413 21
1859	52,150 00*	1875	86,645 50	1899-1900	206,853 39
1860	80,494 12	1876	95,335 43	1901-2	222,107 56
1861	74,008 97	1877	90,579 01	1903-4	200,147 13
1862	81,086 72	1878	107,605 45	1905-6	240,982 09†
1863	65,192 39	1879	84,301 61		
1864	56,000 00*	1880	91,517 75		

It is very evident that the biennial session instead of the annual session has resulted in a saving.

4. Expenditures for the State Courts.

1849-50	$14,500 00	1869-70	81,771 80	1889-90	176,366 89
1851-2	13,000 00	1871-2	87,007 67	1891-2	194,822 77
1853-4	19,500 00	1873-4	90,168 03	1893-4	204,814 45
1855-6	40,500 00	1875-6	100,076 74	1895-6	207,562 56
1857-8	45,000 00	1877-8	114,898 94	1897-8	226,382 18
1859-60	56,875 00	1879-80	132,431 83	1899-1900	233,305 68
1861-2	61,638 23	1881-2	135,504 24	1901-2	213,384 86
1863-4	67,164 89	1883-4	141,429 54	1903-4	250,914 67
1865-6	72,781 99	1885-6	146,752 25	1905-6	287,935 33
1867-8	78,767 80	1887-8	156,207 03		

* Estimated.

† Special session included.

[a] Expense of publishing laws not included prior to 1897-8. In 1895-6 such expense was $45,283.65; in 1897-8, $51,700.00.

5. State Prison. The Insane, Blind, Deaf and Dumb in State Institutions.

1849-50	$5,319 27	1869-70	650,219 87	1889-90	788,109 43
1851-2	8,364 72	1871-2	845,299 04	1891-2	755,040 65
1853-4	33,356 02	1873-4	902,242 41	1893-4	768,094 70
1855-6		1875-6	998,568 44	1895-6	1,108,971 64
1857-8	250,000 00	1877-8	842,978 05	1897-8	1,586,725 65
1859-60	244,298 59	1879-80	797,880 24	1899-1900	1,597,207 98
1861-2	241,173 65	1881-2	809,061 00	1901-2	1,455,224 33
1863-4	151,750 25	1883-4	654,288 50	1903-4	1,586,404 78
1865-6	379,407 90	1885-6	668,715 82	1905-6	1,911,134 22
1867-8	667,357 22	1887-8	810,113 97		

6. Miscellaneous and Contingent Expenses.

1849-50	$31,226 72	1869-70	335,679 26	1889-90	1,284,804 14
1851-2	43,333 02	1871-2	506,096 05	1891-2	1,406,006 41
1853-4	56,659 56	1873-4	644,145 96	1893-4	1,288,589 00
1855	36,500 00	1875-6	694,167 36	1895-6	2,778,698 99
1857-8	195,174 25	1877-8	681,534 74	1897-8	
1859-60		1879-80	460,577 11	1899-1900	1,816,308 97
1861	98,315 05	1881-2	558,212 84	1901-2	1,670,700 46
1863-4		1883-4	697,355 77	1903-4	2,779,999 28
1865-6	165,700 00	1885-6	1,188,430 95	1905-6	
1867-8	352,007 51	1887-8	1,167,381 33		

III. The Trust Fund Incomes

1. The School Fund Income.*

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1849-50	$24,113 38		1879-80	$381,858 88	$374,635 93
1851-52	87,829 66		1881-82	390,517 37	388,059 45
1853-54	174,236 73		1883-84	398,973 68	413,701 81
1855-56	279,056 88	148,882 59	1885-86	885,490 52	877,708 82
1857-58	398,835 61	375,770 28	1887-88	1,467,444 29	1,455,546 99
1859-60	348,968 08	353,839 68	1889-90	1,544,769 72	1,555,151 60
1861-62	338,850 41	341,673 87	1891-92	1,649,859 60	1,640,618 81
1863-64	308,849 47	333,681 47	1893-94	1,715,220 27	1,708,889 49
1865-66	345,401 12	353,647 16	1895-96	1,637,991 23	1,629,359 99
1867-68	343,226 92	345,814 58	1897-98	1,590,913 07	1,475,351 97
1869-70	349,607 96	341,966 05	1899-1900	1,595,113 81	1,579,643 57
1871-72	349,892 71	337,240 26	1901-02	2,443,660 56	2,463,883 94
1873-74	366,526 64	371,541 03	1903-04	3,190,728 48	3,095,560 91
1875-76	379,148 79	385,560 27	1905-06	3,060,430 45	3,056,208 17
1877-78	374,921 57	380,187 07			

* Receipts from taxes are included.

2. The University Fund Income.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1850	$441 67		1879-80	$131,450 00	$131,498 27
1852	416 04		1881-82	136,600 18	136,567 53
1853-54	13,574 11	$13,895 21	1883-84	152,058 00	152,058 00
1855-56	28,347 01	28,347 91	1885-86	214,020 81	214,020 81
1857-58	40,889 52	41,841 60	1887-88	212,488 91	212,488 91
1859-60	39,776 27	39,496 06	1889-90	276,887 51	276,887 51
1861-62	36,534 24	30,167 72	1891-92	431,288 53	431,288 53
1863-64	24,566 85	25,923 24	1893-94	708,399 22	708,399 22
1865-66	29,559 96	25,232 21	1895-96	652,061 44	652,061 44
1867-68	45,996 62	49,350 66	1897-98	796,157 12	796,157 12
1869-70	59,949 55	62,097 98	1899-1900	994,947 58	994,947 58
1871-72	70,241 29	69,812 67	1901-02	715,380 83	715,380 83
1873-74	85,847 69	85,206 56	1903-04	1,239,900 24	1,237,481 23
1875-76	83,474 62	83,409 77	1905-06	2,237,514 11	2,213,052 62
1877-78	134,758 25	134,653 05			

3. The Agricultural College Fund Income.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1866	$145 77		1887-88	$32,730 32	$32,730 32
1867-68	4,221 50	$43 33	1889-90	28,998 46	28,998 46
1869-70	15,028 78	17,863 76	1891-92	34,205 38	34,205 38
1871-72	26,051 69	26,025 56	1893-94	45,219 06	45,219 06
1873-74	31,313 52	31,166 40	1895-96	52,784 15	52,784 15
1875-76	29,820 88	29,638 78	1897-98	60,075 18	60,075 18
1877-78	36,504 27	36,406 90	1899-1900	27,951 88	27,951 88
1879-80	31,672 27	31,151 39	1901-02	35,619 17	35,619 17
1881-83	33,879 18	33,621 19	1903-04	26,167 78	26,167 78
1883-84	34,947 54	34,947 54	1905-06	26,487 29	38,750 04
1885-86	32,990 91	32,990 91			

4. The Normal School Fund Income.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1866	$69,430 94	$22,761 03	1887-88	$214,888 22	$214,310 65
1867-68	86,711 59	121,859 29	1889-90	215,326 41	215,326 41
1869-70	104,634 41	108,538 82	1891-92	292,705 38	292,705 38
1871-73	113,372 59	92,291 81	1893-94	473,911 17	473,911 17
1873-74	151,554 00	116,497 32	1895-96	387,708 59	387,708 59
1875-76	157,394 92	208,668 89	1897-98	509,778 03	509,778 03
1877-78	168,440 95	190,892 53	1899-1900	625,269 51	625,269 51
1879-80	163,544 98	163,470 07	1901-02	638,898 59	638,898 59
1883-84	176,223 96	176,223 96	1903-04	668,996 42	509,588 29
1885-86	200,174 44	200,752 01	1905-06	565,458 37	657,573 42

IV. The Swamp Land Fund, the Swamp Land Fund Income, and the Drainage Fund.

1. The Swamp Land Fund.

Year.	Receipts.	Disbursements.
1856	$53,622 52	$714 20
1857	323,542 98	14,188 36
1858	51,370 81	
1859	14,468 61	22,114 60
1860	23,177 18	27,406 42
1861	27,242 49	21,278 21
1862	14,755 73	8,928 90
1863	31,929 98	6,177 40
1864	42,250 01	71,022 12
1865	91,411 40	95,391 13
1866	4,613 56	1,955 26

2. The Swamp Land Fund Income.

Year.	Receipts.	Disbursements.
1856	$1 26	
1857	22,762 10	
1858	66,203 13	
1859	56,761 27	
1860	35,508 92	
1861	22,547 54	$29,311 84
1862	16,157 33	17,357 49
1863	13,544 35	14,850 68
1864	16,383 88	16,961 12
1865	19,463 20	21,964 07
1866	114 90	342 41

3. The Drainage Fund.

Amount of the Fund in 1867 was $36,998.62.

Year.	Receipts.	Disbursements.	Year.	Receipts.	Disbursements.
1868 ..	$78,826 14	$99,095 90	1887-88	$137,579 40	$153,332 85
1869-70	84,073 26	94,459 32	1889-90	96,280 73	121,982 50
1871-72	269,337 85	232,371 75	1891-92	149,492 22	171,335 98
1873-74	135,954 70	175,793 90	1893-94	51,854 99	122,374 71
1875-76	44,889 66	59,772 30	1895-96	64,831 34	49,077 73
1877-78	31,397 88	31,550 14	1897-98	35,136 19	54,381 09
1879-80	32,337 61	32,275 18	1899-1900	22,741 91	33,012 41
1881-82	116,314 06	72,518 26	1901-1902	1,818 30	318 43
1883-84	131,575 46	131,418 41	1903-1904	7,339 40	1,815 74
1885-86	90,450 99	73,781 82	1905-1906	15,991 74	*25,607 25

* 7,000 was transferred to Normal fund.

V. The War Fund

Year.	Receipts.	Disbursements.
1861:		
Sale of bonds	$600,227 50	
40 per cent of claims against U. S.	205,000 00	$791,875 92
U. S.	3,531 06	
Loan from State Bank	10,000 00	
1862:		
Sale of bonds	472,608 19	
From U. S. on account of advance	222,115 83	643,499 03
Refunded by individuals	2,109 11	
1863:		
Miscellaneous	2,210 63	
Sale of bonds	310,396 00	776,789 76
Tax	272,156 16	
U. S.	147,163 83	
1864:		
Loans from the trust funds	385,000 00	
Sale of bonds	12,350 00	680,399 28
Tax	300,000 00	
Miscellaneous	2,913 56	
1865:		
Loans from the trust funds	623,000 00	
Loans from general fund	195,000 00	
U. S.	300,000 26	1,340,669 19 (Includes $198,716.75 paid into the general fund)
Tax	200,000 00	
Sale of bonds	44,677 25	
Refunded	1,413 68	
1866:		
From the trust funds	135,000 00	
Sale of bonds	13,604 31	172,166 17
Refunded	319 67	
1867:		
Sale of bonds	8,154 90	
Miscellaneous	13 00	10,739 02
1868:		
Sale of bonds	1,685 00	
From general fund to close war fund	8,256 39	3,966 95

In 1902 and 1903 Civil War claims amounting to $460,436.20 were paid to the state.

VI. Spanish War

Expenditures for 1898, $159,241.31.

VII. Statistics of Population and Resources

1. Population.

1840.	1850.	1860.	1870.	1880.	1890.	1900.	1905.
30,945	305,391	775,881	1,054,670	1,315,497	1,686,880	2,069,916	2,288,949

2. Agricultural Statistics.

Year.	Value of farms.	Value of farm implements.	Value of farm property, including land with improvements, machinery and live stock.	Value of farm products.
1850	$29,528,563	$1,641,569	$35,067,516	
1860	131,117,164	5,758,847	154,683,386	
1870	300,414,064	11,391,491*	287,971,447[10]	$62,421,618[11]
1880	357,704,507	15,647,196	419,365,246	72,779,496
1890	477,524,577	19,167,010	560,475,894	70,990,645
1900	686,147,660	29,237,010	811,712,319	157,445,713
1905				

3. Manufacturing Statistics.

Year.	Capital employed.	Value of manufactures.
1850	$3,332,148	$9,293,068
1860	15,331,581	27,949,467
1870	41,981,872	77,214,326
1880	73,321,802	128,255,480
1890	246,515,404	248,546,164
1900	330,563,779	360,313,942
1905	405,954,593	391,216,147

* The currency value usually given was $14,239,364.

[10] The currency value usually given was $359,964,310. To obtain specie values for 1870, reduce currency value one-fifth.

[11] Gold figures.

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THE FINANCIAL HISTORY OF WISCONSIN

BY

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Instructor in Economics, University of Minnesota
(Sometime Fellow in Economics, University of Wisconsin)

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